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ABSTRACT

This curriculum guide, suitable for a wide range of students from elementary to high school, offers an interdisciplinary approach to law-related education (LRE) intended to assist teachers with introducing LRE into courses for gifted and talented students and all types of learners. Each lesson identifies how many of the seven intelligences (Howard Gardner, 1993) are utilized in that lesson. The eight units of the curriculum cover the legal issues of the old growth forests, the internment of Japanese Americans, the Salmon Summit, the automobile industry, freedom of speech, search and seizure in Washington state, immigration, and animal rights. The guide begins with a definition of LRE, its objectives and methods, and its place in the general school curriculum. The introductory section also includes a description of the University of Puget Sound School of Law's Institute for Citizen Education in the Law (UPSICEL) and a history of this curriculum project. The lessons encourage interactive and cooperative learning through the methods of brainstorming, hypotheticals and case studies, role playing and simulation, group activities, and opinion polls. Each lesson plan specifies the required number of class periods, the objectives, and procedures. The lesson plans include student handouts such as newspaper articles and worksheets. (JD)

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Challenging Students With the Law

An Interdisciplinary Curriculum for Gifted and Talented Students at the Upper Elementary and Middle School Levels

Written by
Julia Ann Gold
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A Publication of UPSICEL

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Introduction

What Is Law-Related Education?

A definition of law-related education (LRE)

According to the Law-Related Education Act of 1978:

> *...the term law-related education means education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based. Law-related education (LRE) helps students develop the knowledge, skills, understanding, and attitudes necessary to function effectively in a pluralistic, democratic society based on the rule of law.*

[Statement adapted from the Winter 1983 *LRE Project Exchange*, "Why Lawyers Must Care About LRE," published by the American Bar Association.]

LRE teaches young people how the legal and political systems function and—most of all—how they fit in. How does the law affect them and how can they affect it? What relevance does the Constitution have in their lives? Why have certain legal procedures been established and how well have they worked in resolving disputes?

LRE is about real issues as they affect real people: little people and big people. At its best, LRE teaches students to reason through hard questions and to grapple with realistic problems. Elementary school children might be asked to puzzle through questions of fairness in the water-fountain line or examine the need for rules in sports and games. Older students might look at the problems of assuring equality in a diverse society or the conflict between rights and responsibilities. The emphasis often may be on applied skills, such as how to read a contract and become a wiser consumer, or may be on such broad skills as analytical thinking, ability to persuade others, and ability to reach decisions after having identified issues and weighed evidence.

Law-related education is active. It teaches because it involves kids. It works because it has them confront—in case studies, roleplays, mock trials, and other active instruction techniques—the actual dilemmas that citizens must face if they are to make democracy work. In many programs, students meet with lawyers, judges, police, and other community people to see the law in action.

LRE is a proven way of improving younger people's self-image, their attitudes, and their knowledge about law and government. The experience of hundreds of communities, large and small, shows that LRE can make a difference.

Delinquency Prevention

Another key aspect of law-related education is that when it is *properly* taught, it reduces delinquency and leads to positive citizenship behavior. The Center for Action Research identified six criteria for effective LRE programs. [Judith Warren Little and Frances Haley, *Implementing Effective LRE Programs* (Boulder, CO: SSEC, 1982). See also Robert M. Hunter, "Law Related Education Practice and Delinquency Theory," *The International Journal of Social Education*, 2 (Autumn 1987): 52-64.]

Four of the six characteristics that make up a properly conducted program relate to the curriculum. They include preparation and use of outside resource persons; sufficient quality and quantity of instruction; selection of balanced, illustrative materials and management of controversy; and active participation and student interaction. These criteria are built into the design of this curriculum.

Preparation and use of outside resource persons refers to using a wide variety of appropriate community members in an interactive manner in the classroom. Simply having community members as formal speakers is not sufficient. For example, having a community member respond to students' opinions in an opinion poll or judging a mock trial is more effective than having the resource person lecture students about a topic.

Sufficient quality and quantity of instruction refers to using instructional practices that enhance the likelihood that students will be successful; such practices include checking for understanding, employing sufficient wait time, stating learning objectives, sequencing questions, and others.

Quantity of instruction relates to the amount of time devoted to a single topic and the amount of instructional time spent on law-related topics. While there is no magic number of hours, research suggests that students need enough time to grapple with a topic in some detail, to examine nuances of the issue and to feel some mastery over the topic.

Use of balanced materials and management of controversy constitute the third characteristic of effective LRE teaching. Findings in this area indicate that material that shows the judicial and law enforcement systems as always correct or always making mistakes has a negative impact on student attitudes. Consistently negative examples engender disrespect for the law and judiciary while consistently positive examples do not mesh with students' knowledge that mistakes and injustices do occur. When students feel that the examples are too positive, they may reject all information transmitted through a course. Therefore, examples should be chosen to reflect the realities of law and the judiciary. If a negative example is chosen to illustrate one point, a positive one should be selected for another.

Management of controversy does not mean that it should be avoided, but rather that it should be approached in a positive and constructive manner. Students must recognize that differences of opinion are natural and can be a fruitful vehicle for exploring the various positions that can be taken on any issue. However, for controversy to be beneficial, students must examine and discuss the issues in a thoughtful way, avoiding personal attacks that can be hurtful and destructive.

Opportunities for active participation and student interaction represent the final curricular factor influencing delinquent behavior. Activities that require students to work together cooperatively and encourage student-student communication have a positive impact. Likewise, activities in which students become actively engaged in the learning process are also beneficial. For example, students might interview other students, assume the roles of lawyer or judge or lobbyist, or prepare for a Senate committee hearing rather than passively read about an issue.

While each of these factors is clearly influenced by the curricular materials, one must recognize that ultimately the curriculum is what students experience in their classes. Teachers' instruction methods and what they do with the curricular materials available will determine their effectiveness. Inappropriate use of even the best materials will negate their effectiveness. For example, this curriculum makes suggestions for community resource persons who could assist in the curriculum's delivery, but instructors actually determine if that recommendation will be followed. Similarly, quality of instruction will largely be determined by the instructor's choice of instructional practices rather than by the curriculum. The role of the teacher, then, is all important.

Why Does LRE Work With Gifted and Talented Students?

Law is an ideal vehicle to focus highly capable students on significant issues and problems facing today's pluralistic society. Among the characteristics of giftedness are a keen sense of justice and a deeply felt need to contribute to the fabric of society. The law not only challenges and stimulates gifted students and makes sense for their educational experience, but it is also a significant investment in their becoming future participants in our democratic society. These students, some of whom will become tomorrow's leaders, are sensitive to and concerned about environmental issues and social problems, solutions to which involve policy choices and legislative approaches. Learning at an early age how laws are made, and how public policy can shape our nation's future is critical to empowering the next generation to solve problems.

Study of the law has the capacity to reach those gifted and talented students who are at-risk of dropping out, who are economically disadvantaged, have limited English proficiency, or have disabling conditions. Students at-risk often find the traditional curriculum irrelevant. Study of legal issues and students' rights and responsibilities under our legal system is relevant, practical, and has application to their daily lives. The liberal use of outside resource persons in law-related education classes also puts these students in contact with individuals who are solving problems out in the "real world." While the goal of law-related education is not to induce students to become lawyers, the use of resource persons, especially minority and women attorneys and judges, provides important role models for minority and female students. Gifted girls, for example, have a chance to interact with women succeeding in the professional world.

The opportunity to grapple with complex, multi-layered concepts is inherent in the study of legal issues. The law has many gray areas, and students are uniquely challenged to see multiple points of view when dealing with a legal controversy. The curriculum is designed to encourage creative problem solving. It integrates learning styles, allows for transferring skills learned and integrates curriculum across several disciplines. There are ample opportunities for developing research skills and teaching resource options.

Finally, the law has the unique capacity to stimulate students of every ability level. Gifted students, who are rapid learners, intuitive, able to see connections quickly and respond readily to the complexities of the law, are often "mainstreamed" with other students. Students who are not gifted also find study of the law stimulating and exciting. The interactive strategies and content of law-related curriculum allow these students to work together on problems, and also provide avenues for gifted students to develop and demonstrate their giftedness by doing additional research and extension activities beyond the confines of the basic lesson. Extension activities and opportunities for additional research are included in every unit.

Multiple Intelligences

The units were also written with the intention of engaging all types of learners. The knowledge that children learn best in a variety of ways is not new to the classroom teacher. Dr. Howard Gardner, in his 1983 book *Frames of Mind*, outlined his theory of multiple intelligences. Gardner pointed out that most teaching has reinforced and rewarded two of the seven types of intelligence he identified: verbal and logical-mathematical. He suggested that at least five other kinds of intelligence exist that we may not intentionally address in our classrooms on a regular basis. These are visual-spatial, bodily-kinesthetic, musical, interpersonal, and intrapersonal. While most good teachers "hit" some of these intelligences when they teach, these units are designed to encourage teachers to allow students to learn in a greater variety of ways. In this way all levels of students, both gifted and talented and others, will encounter more success in school.

Each lesson in this curriculum identifies how many of the seven intelligences is utilized in that lesson. Each type of intelligence utilized is indicated at the beginning of each lesson. The seven types of intelligence are:

- **Visual-spatial intelligence** includes the capacity to think in three-dimensional terms; to perceive internal and external imagery; and to recreate, transform, or modify images. These students love learning with images, pictures, charts, graphs, diagrams and art.
- **Linguistic intelligence** consists of the ability to think in words and to use language to express and appreciate complex meanings. These students love language: talking, hearing, and reading.
- **Intrapersonal intelligence** includes the ability to be aware of one's emotions and to express them. These students are self-directed learners who are independent and enjoy quiet times, private places, and look for personal relevance.
- **Interpersonal intelligence** includes the ability to understand and communicate with others. These students enjoy learning by interaction and desire to know the social relevancy of what they are learning.
- **Musical intelligence** is evident in those with a sensitivity to pitch, melody, rhythm, and tone. These students enjoy melody and rhythm and learn easily when information is sung, clapped, and tapped.

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- **Kinesthetic intelligence** enables one to manipulate objects and fine-tune physical skills. These students learn best by moving, touching, and doing.
- **Logical-mathematical intelligence** includes the ability to calculate, quantify, consider propositions and hypotheses, and carry out complex mathematical operations. These students enjoy forming concepts and like looking for patterns and relationships in a sequential manner.

Thanks to Linda Campbell for her distillation of Howard Gardner's theory of multiple intelligences. [See Campbell, Linda, Bruce Campbell and Dee Dickinson. *Teaching and Learning Through Multiple Intelligences*. 1992. Available from New Horizons for Learning, 19614 Sound View Drive, Stanwood, WA 98292. FAX 206-652-9503.]

UPSICEL

(University of Puget Sound School of Law's Institute for Citizen Education in the Law)

UPSICEL was created in 1987 to promote law-related education (LRE) in Washington State, as well as in national and international arenas. It built upon the Street Law course offered at the UPS School of Law that has made LRE a part of Tacoma schools since 1982. The goals of the Institute are to increase awareness of rules that govern everyday behavior, promote values of democracy and understanding of the Constitution, increase effective citizen participation, promote willingness to use legal means to resolve disputes, and increase levels of tolerance, fairness and respect for the rights of others.

The Institute has developed LRE curricula in several areas: the Washington Supplement to the national *Street Law* text; *LRE: Linking Language Arts and Social Studies*; *Community Service Guide to Law Related Education* with accompanying video—"Hearts and Minds Engaged;" *Juvenile Justice in Washington State*; *Teaching the Bill of Rights*; *Linking Law and Social Studies*, and a law school manual *Teaching Law Students to Teach*. UPSICEL cooperated with Mississippi Educational TV to produce "You've Got That Right," a video series on the Constitution for use with "at risk" ninth graders.

A major component of UPSICEL's work is conducting teacher training. UPSICEL offers LRE training programs for kindergarten to adults in a broad area of topics and methods, including drug focused LRE, survival law for limited English speakers, interdisciplinary LRE, detention LRE for juveniles and adults, minority outreach LRE, and corrections and probation officer training.

Since 1988, UPSICEL has served as the state coordinator for LRE on behalf of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

In conjunction with the American Bar Association's Special Committee on Youth Education for Citizenship, UPSICEL hosted a three-state minority outreach LRE conference in 1991.

UPSICEL is presently one of five LRE state projects selected to collaborate with the Social Science Educational Consortium in Colorado in the development of a practical guide to authentic assessment of LRE.

The Institute coordinates LRE activities with the Southern African country of

Lesotho. The Institute hosts lawyers and educators from LRE projects in other countries to participate in Washington's LRE efforts.

The Institute has compiled a comprehensive directory of LRE materials, events and resources for use in Washington, *Teaching About the Law: A Law Related Education Directory*. It is now available as a database on Macintosh or IBM format.

UPSICEL is represented on the Board of Directors of the Washington Center for Law-Related Education, the Advisory Board of the Washington State Council for the Social Studies, and its Director is an advisory member of the ABA/YEFC board and was the 1989 Chair of the American Associations of Law Schools Section on Teaching Law Outside of Law Schools.

The Institute is directed by Margaret Armancas-Fisher, an attorney who has worked in LRE full-time on the national level since 1977 and in Washington State since 1982. Julia Ann Gold, an experienced trial attorney with a rich variety of LRE experience with a special emphasis on mediation, is Deputy Director.

UPSICEL has been funded by:

- American Bar Association's Special Committee
- Governor's Juvenile Justice Advisory Group
- The Greater Tacoma Community Foundation
- Legal Foundation of Washington
- National Institute of Corrections
- Washington's Office of the Administrator for the Courts
- Washington's OSPI Chapter 2 – 20% grant program
- National Institute for Citizen Education in the Law
- State Justice Institute
- United States Department of Education
- United States Department of Justice

A History of the Project

Workshops and training sessions offered by UPSICEL have always included teachers and administrators from programs for gifted and talented students. Feedback from those teachers that the materials worked well with highly capable students inspired UPSICEL staff to apply for funding to develop more curriculum designed specifically for that audience. After surveying teachers and administrators working in programs for gifted and talented students in the state of Washington, UPSICEL determined that curriculum was most needed for students at the upper elementary and middle school levels. UPSICEL also found that teacher training for teachers of gifted and talented students was a genuine need as well. In the spring of 1992, UPSICEL applied for a Jacob Javits Gifted and Talented Students Education grant from the U.S. Department of Education.

In the summer of 1992, the U.S. Department of Education selected UPSICEL to implement a program of curriculum development and training for teachers and coordinators of programs for gifted and talented students over a two-year period. The activities funded include: developing eight units for upper elementary and middle school students that integrate social studies, language arts, civics and science with the law; conducting two week-long training sessions for teachers, administrators and coordinators of gifted programs—one in August 1993 and a second in summer 1994; and conducting three regional training sessions during the 1993-94 academic year.

UPSICEL contracted with Tarry L. Lindquist, who teaches 4th and 5th grades in the Mercer Island School District. Ms. Lindquist brings 25 years of teaching experience to this project. She has worked in curriculum development on both the state and national levels. She was named the National Elementary Social Studies Teacher of the Year in 1990. She has worked with UPSICEL on other projects and has used law-related education in her classroom for over 15 years.

UPSICEL also contracted with Dr. Gail Hanninen to be the Project Evaluator. Dr. Hanninen is Director of Student and Academic Services, Yakima School District. She is the 1992-94 President of the Council for Exceptional Children, division of Gifted and Talented students, and a former Supervisor of the Gifted Education and Dropout Prevention Program at the State Office of the Superintendent of Public Instruction.

Starting in October 1992, UPSICEL staff met with consultant Tarry L. Lindquist to plan the curriculum, and selected a working committee of four teachers to field test the first four units.

Bob Becker, Sally Bender, Gloria Brenchley, and Cheryl Richardson, all experienced teachers in programs for gifted and talented students, met in November 1992 to brainstorm unit topics and make suggestions for the writing of the curriculum. In March 1993, these teachers met again to receive the curriculum for field testing. Dr. Hanninen attended this meeting, and reviewed the field testing procedures and forms she developed with the four teachers.

By June 1993, the field tests were over, reports reviewed, and the curriculum was revised for the August 9th through 13th training of 40 teachers, administrators and counselors drawn state-wide.

During the 1993-94 academic year, three one-day regional training sessions will be held around the state, for up to 40 teachers, administrators and counselors each. A second week-long training will take place during the summer of 1994, when four new units will be introduced.

Handouts for four of the final eight units will be translated into Spanish and Vietnamese during the second year of the project. Teachers who work with students for whom English is a second language will be recruited to attend the 1994 training.

How to Use This Curriculum

While the curriculum was designed for highly capable upper elementary and middle school students, teachers will find that is suitable for a wide range of students, from elementary to high school levels. Since all units include optional extension activities and opportunities for shortening or lengthening the study, it is anticipated that students of many ability levels will find the curriculum both challenging and exciting.

The curriculum is composed of four units—Old Growth Forests, the Japanese

American Internment, the Salmon Summit, and the Car on Trial. An additional four units will be completed by the second training in the summer of 1994. Each unit will take from 12 to 16 class periods if all lessons are completed. Some units could be completed in a shorter amount of time if lessons and activities are omitted.

These units provide explicit instructions for teachers and accompanying handouts. However, the lesson plans are intended only as guides. Teachers may decide not to cover every point made nor should the teacher read word-for-word except to give hypotheticals or quote facts as needed. Only the handouts are to be distributed to students.

Each unit begins with a description and outcomes for the entire unit and a bibliography. As stated, the use of outside community resource persons in an interactive manner with students is a critical component of successful LRE. Therefore, suggestions on who may be a useful resource for the classroom are indicated for every unit. Then, each lesson plan lists the specific learning objectives for that lesson. Any materials needed for the lesson are identified, including the accompanying student handouts.

Next, the procedures are laid out. Answers are provided in this section to the questions and activities presented in the handouts. Handouts are identified by unit name, lesson number, and title.

After selecting the handout, the teacher should reproduce the handouts prior to class in sufficient number for students. The original should be kept clean and returned to the three-ring binder for subsequent use. The teacher should be careful to identify all the pages to each handout since many handouts have more than one page.

Service Learning

The curriculum strongly encourages the use of community service learning as an instructional method. Ideas for service learning activities are included in each unit. UPSICEL has pioneered the use of service learning as an instructional method in law-related education.

Service learning is the intentional integration of curricular content with community service activities. It focuses on recognizing and promoting the value of serving one's community and enables students to learn through service experiences. For example, students studying the migratory salmon might adopt a stream in the neighborhood near the school, work with neighbors to clean up the stream, and plant trees along the bank to improve the ecology of the area. The text *Community Service Guide to Law-Related Education*, by Margaret Armancas-Fisher, Julia Gold and Kate McPherson, with accompanying video, "Hearts and Minds Engaged," is available from UPSICEL. The book will be available from West Educational Publishing in 1994. (1-800-328-9424)

Included throughout the units are suggested teaching strategies designed to encourage student participation in the classroom. A minimum of lectures and a maximum of student involvement have been found to be most successful in using this type of curriculum. The various methods included in the curriculum are briefly capsulated below. They are merely included as a refresher and an indication of how they fit into this curriculum.

Small Groups

Used in conjunction with a number of other strategies, small groups are a very effective tool for promoting cooperative learning and student interaction. Small group learning, like so many other teaching methods, can yield wonderful results if teachers, and students, learn how to maximize its potential advantages and minimize or even eliminate its potential disadvantages.

Among the many potential advantages these units try to promote, the principal advantage is the high level of student interest and involvement that is possible in small group learning experiences.

Carefully structured, small group learning activities can all but ensure active learning by every student in the class. The key, though, is the phrase "carefully structured." For small group learning to work successfully, the tasks given to groups must be carefully thought through and structured so that the group knows what it must do, stays on task, and manages its time according to a pre-arranged timetable. Although there is no required size for a small group, three to five members seems to work best for most tasks. Occasionally, pairs work better if group members are collaborating on a writing task or are editing each other's work. Groups of six or more tend to become unwieldy. They lose some of the advantages of small group learning because a given member of a six or more person group can still sit back passively rather than participate actively.

Brainstorming

This method calls for the students to come up with a list of responses to a question posed by the teacher. It is usually best to write these responses on the board as students answer and, after the class' suggestions are exhausted, add any overlooked answers and then discuss them in more detail.

Hypotheticals and Case Studies

These methods present facts and require the application of law to these facts. While the "answer" to the problem is important, the greater value lies in using questions and other discussion techniques to bring out arguments and considerations on all sides of the issues. Suggested steps to take in discussing a hypothetical or case study follow.

- Have the teacher, or a student who is a good reader, read the hypothetical aloud.
- Ask other students to list the key factors in the case (write on the board).
- Ask what the issues are in the specific case. Ask students to state each issue as a question.
- Ask students to give arguments on all sides of the issues. Discuss and try to remain unbiased.
- Ask the students what they thought the decision was in the real case. Tell them what the decision was and the reasons for it. Ask if this was the correct decision. Why or why not?
- What was the significance of the decision? What reasoning did the court use to arrive at the decision? Did it set a precedent for the future? Is it likely to be changed in the future?

Role Plays and Simulations

Role plays are activities in which students assume the role of another person and act it out. Students are usually given time to prepare. Role plays may involve any interaction between people and also include simulations of actual courtroom activities. Mock trials are court hearings to establish the facts and apply the law. Moot court hearings are appeals court arguments on the law. These activities are designed to focus student interest on a particular law or procedure while allowing them the opportunity to demonstrate the knowledge they have acquired. These activities also allow students to gain different perspectives by observing the role of another and allow them to practice persuasive skills.

There are three stages of development in any role play: preparation, enactment, and debriefing. The preparation stage involves assignment of roles, explanation of the process and preparation time for the players to learn their roles. Many of the hearings are simplified to allow completion in a single class period; others are designed with one or two days of preparation. Roles are provided for the entire class to participate, students without specific roles can serve as observers who must write decisions.

Teachers should play a low-key or even invisible role during the role play. In certain instances, where the activity has gone way off track or part of it is taking too long, it may be appropriate for the teacher to step in and make suggestions or ask questions.

The most important of these stages is the debriefing, which should use questioning to raise questions such as: What were the key issues raised in the hearing? What is the law or principle that was involved here? Were the participants realistic and effective in their roles? Could they have performed their roles differently? Were there arguments not made that you would have made? How would you have decided the case? Was the proceeding fair?

Mediation is introduced in the curriculum as an alternative method of resolving disputes. In the Salmon Summit, for example, a mediator is invited to assist the various interest groups find common ground.

Visual Aids

Pictures and charts are also useful ways to present information. Students studying Old Growth Forests, for example, examine ads designed by the timber industry and environmental groups.

Opinion Poll

An opinion poll is a strategy that allows students to express their opinions on the topic of study. Typically, a poll allows for a spread of opinions (agree, undecided, disagree). An opinion poll can serve as a springboard for classroom discussion, give the teacher feedback on student values, be used to assess changes in students' attitudes following instruction and lay the foundation for how the law in fact applies to the situation described.

To conduct an opinion poll, the teacher should have each student privately express his or her opinion (for example, by writing the appropriate response on the student handout). The teacher should then develop a class composite. This can be done by a simple show of hands, by having students move to align themselves under a banner agreeing with their position, or other creative ways. Finally, students should be asked to explain their opinions and list opposing points of view.

The instructor can use various poll items dealing with the same principle to check the consistency of student beliefs. Afterwards, the teacher should then present information as to the state of the law in Washington on the items in the poll. It is important that teachers recognize that varying shades of opinions are legitimate, even when opinions differ from the law or the teacher's own views. Students, however, are expected to give reasons for their opinions. It is useful to use the opinion poll as a demonstration of the legislative process which evaluates various values and designs statutes based on the majority's values.

Advertisements and Editorials

Analyzing advertisements and editorials related to LRE topics allows students to explore the various facets of effective communication. In the Old Growth Forest unit, students write ads about the spotted owl controversy for specific purposes and specific readers, and read an editorial about the issue. By using real world writing situations like ads and editorials, then, students see the practical realities of effective communication and persuasion.

Questioning

Questioning is used in this material to: 1) check for student understanding, 2) solicit student opinions on controversial issues, 3) teach higher level thinking skills, and 4) lead students to an answer the teacher desires. In each case, teachers should try to equalize wait time (that is, the time given to students to respond to a particular question). It is also desirable to promote student-to-student questioning and discussion where appropriate.

Lecture

This method should be limited as much as possible since great use of lecturing will be of negative value. However, there are times when certain points may be made most appropriately by lecture. It is important to give examples, ask questions and brainstorm during a lecture.

Evaluation

Teachers should use a variety of methods to check frequently for student understanding. Question and answer techniques and short hypotheticals are useful to measure class progress and understanding. The lesson objectives are useful guides to writing questions for review.

Resource Persons

The characteristic of law-related education that has the greatest potential for having a positive impact on students' behavior is the appropriate use of outside resource persons. Using lawyers, courtroom personnel, judges, police, state inspectors, social workers, environmentalists, policy makers, and other key resource persons in the classroom is important.

Suggestions are made in each unit as to possible resources persons and their role in the class.

When contacting resources, it is extremely important to inform them of the goals and objectives of the class and to review briefly the classes that come before and that will follow in order to allow for continuity. Share a copy of the lesson with the resource person, who may devise a way to interact successfully with the students.

Old Growth Forests

Introduction

Description

This multidisciplinary unit examines the controversy about the use of the old growth forests of Western Washington. Students assess their opinions and knowledge about old growth forests, and then analyze the Endangered Species Act and consider proposed amendments to the Act. Then students examine the views of different special interest groups involved in the forest controversy. The unit culminates with a mock Congressional hearing at which various interest groups and scientific experts testify.

Extension activities include writing and presenting advertisements about the issue and discussion of two poems: one well-known poem by a significant poet and one relatively unknown poem by an obscure poet. Students will conclude the poetry lessons with one of several writing options. Other extension activities include constructing a data disk about the forest, compiling a Book of Knowledge and cartooning.

Use of Outside Resource Persons

An attorney who practices environmental law would be useful to review the Endangered Species Act, or possibly a biologist, to explain genetic diversity and its importance.

For schools in communities that get their water from the Cedar River Watershed in North Bend, near Seattle, tours of the watershed's old growth forest are available by reservation. The staff naturalist leads the tours of the Watershed, so that students can actually see an old growth forest. For reservations, contact the naturalist at 206-888-1507. Reservations for tours in the spring are taken on the first school day after January 1 and for the fall on or after May 1.

Time Required

10 to 15 class periods.

Note for Science Teachers: Science classes studying old growth forests could study the structure of the forest by taking point samplings of the forest structure. For example, pick a point within the forest, and go out in all directions a radius of 30'. Divide into quadrants. Have students measure the height of the trees. (To do a rough measurement of the height of a tall tree, have a student stand in front of the tree, and an observer stand back and hold up their thumb until the first person's height is a thumb width. Then roughly see how many thumb widths the tree is.) Then measure other bushes and plants. Students can then draw a bar graph that will show the complexity of the old growth forest.

For comparison purposes, the same procedure can be followed in a second-growth forest, and in an area that was recently harvested.

Social Studies and Science Outcomes
Students:

- Identify the characteristics of an old growth forest.
- Develop and refine their views on the old growth forest controversy.
- Define a "threatened" and "endangered" species.
- Review major provisions of the Endangered Species Act.
- Identify a variety of viewpoints on the Northwest timber controversy.
- Advocate the position of one special interest group.
- Practice lobbying on behalf of their group's position.
- Examine the scientific arguments for saving old growth forests, and the timber industry's rationale for harvesting old growth forests.

Reading and Language Arts Outcomes
Students:

- Assess and express their opinions about the old growth forest controversy.
- Read and analyze a variety of material.
- Prepare and present information orally.
- Roleplay an individual, based on research.
- Review and discuss the Endangered Species Act.
- Analyze legal language and evaluate proposed amendments to the ESA.
- See points of view presented in advertising.
- Observe how advertising is written for a specific purpose and specific readers.

Higher Order Thinking Skill Outcomes
Students:

- Solve problems.
- Analyze and apply law.
- Develop new ways to teach others new information.
- Practice suppositions, proofs, and rationales for social issues.
- Evaluate consequences.

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LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Old Growth Forests

Lesson 1

Objectives

- Students will identify the characteristics of an old growth forest.
- Students will develop and examine their views regarding old growth forests and the spotted owl controversy.

Materials

Copies of handouts:

- True-False test.
- Opinion poll.
- Letter to editor.

Time Required

2 to 3 class periods.

Procedures

■ **Announce that the students** will begin their study of the spotted owl and old growth forests by taking a pretest of their knowledge about the topic. Explain that this is not a graded test, but a measurement of what they already know about old growth forests. This pretest is designed to highlight common misconceptions about old growth forests, and to introduce the complexity of the issue. The goal is that students see the issue as larger than just "owls vs. jobs."

■ **Pass out the pretest**. Give students about 10 minutes to complete it. After students have completed the test, go over the answers. The test can be repeated at the end of the unit to check for knowledge gained.

Answers to Pretest

1. **An old growth forest is any forest in which most trees are older than 100 years.**

False. The definition of an old growth forest is far more complex that the age of the trees within it. While the numbers vary depending on who is quoting, most foresters say that to be considered old growth, the trees must be at least 175 to 200 years old. (The Douglas fir tree can grow for 1000 years or more, but stands of Douglas fir in western Washington and Oregon have historically been destroyed by fire every 500 to 800 years.)

The "signature" of an old growth forest is its diversity—both in terms of the variety of tree species and the age of trees. The mix of old and young trees results in a multi-layered canopy over the forest floor. Standing dead trees, called snags, are an essential ingredient of the old growth forest, as well as lots of fallen logs and rotting wood on the ground. The dead trees fall and leave gaps in the canopy, letting sunlight in so that young trees can grow.

2. **Most remaining old growth is on publicly-owned federal land, such as national parks.**

True. Federal lands are divided into four categories: the national parks, the national forest system, the lands held by the U.S. Bureau of Land Management, and wilderness areas. Approximately 94% of the remaining old growth forest is on publicly-owned federal land. Some of this is protected in wilderness areas and national parks. Most of it is in higher elevations. Almost all old growth has been logged from private lands. Some old growth remains on state lands in Washington, but it is less than 10% of the remaining forest land.

3. **The national forests belong to you and me, as citizens of the U.S.**

True. As citizens of the United States, we all own the national forests, and the resources within them. If you have a map of Washington and Oregon, this would be a good time to point out our national forests and national parks. These lands are owned and managed by the federal government.

4. **Our national forests and the U.S. Forest Service were created for the sole purpose of preserving forests and the trees within them.**

False. The national forests are supposed to be for multiple uses, which include timber production, recreation, fishing, hunting, and wildlife habitat. When the national forests were originally created, however, there was no pressure to cut timber from them, because private landowners were cutting timber from their lands, and pressured the Forest Service to keep national forest timber off the already glutted market. National forests also were often further from transportation and markets for the lumber than state and private forests.

During and after the Second World War, however, the demand for lumber grew, and wood from national forests took the place of wood from private timberland that was by then less plentiful. The demand for national forest timber has not let up since.

5. **Dead trees are of no value in an old growth forest.**

False. Standing and fallen dead trees are an essential part of the old growth forest ecosystem. Standing dead trees, called snags, provide homes for insects, birds, and mammals. Fallen dead trees open up a hole in the forest canopy when they fall to the ground, allowing sunlight through, and then provide nutrients as they decay.

6. **Tree farms grow wood more efficiently than old growth forests.**

True. In an old growth forest, the growth of trees slows down after about 70 to 100 years, and eventually the trees begin rotting on the inside as quickly as they are growing on the outside. Since these forests reach maturity at about 200 years, their growth slows down, and most of the forest's energy is used to maintain itself. Eventually, the trees either rot, are blown over, or are burned by a forest fire. In the amount of time that this cycle takes, timber companies can grow many crops of trees.

7. **The old growth forests of the Olympic Peninsula of Washington State are temperate rain forests and receive as much as 180 inches of rain a year.**

True. For comparison purposes, a tropical rain forest, such as the Amazon, receives 80 to 100 inches of rain per year. The city of Seattle receives 39 inches of rainfall per year. "Temperate" refers to our climate in the Pacific Northwest, that ranges from fairly hot to fairly cold, as the seasons change.

8. **Old growth forests are "biological deserts," meaning there is little animal and plant life within them.**

False. Only 40 years ago, a Forest Service expert described the ancient forests of the Pacific Northwest as "biological deserts." While tropical rain forests had been studied extensively, the first comprehensive ecological study of the Pacific forest was not published until 1981. It was not until then that biologists and ecologists began to understand the complexity of the Pacific Northwest temperate rain forests.

Only recently have scientists learned that the old growth forests do far more than provide wood. They purify water (as do all forests); provide shelter for wildlife and cool, shady pools and breeding grounds for fish, such as salmon; and increase the local precipitation. A recent study identified 667 species tied to old growth forests.

Old growth forests contain a greater mass of living things, called biomass, than the tropical rain forests (The tropical rain forest contains more variety of species than the temperate rain forest.) While a tropical rain forest may contain 185 tons of plants per acre, a Pacific forest will contain 400 tons an acre. Some redwood forests contain as much as 1,800 tons an acre.

9. **A pair of nesting northern spotted owls requires approximately 5,000 acres (which is about 8 square miles—a little bigger than Mercer Island) of old growth forest for their hunting grounds.**

True. Spotted owls are "picky eaters." They have a very specialized diet of small mammals such as flying squirrels, kangaroo rats and mice, and other rodents that are found in old growth forests. They need a large range to find enough of the food they like. They prefer cavities in snags (standing dead trees found in old growth) and the broken tops of tall living trees as nesting sites because they can sit and watch for their prey from these high vantage points.

10. **It takes longer for snow to melt in an old growth forest than in a clear-cut area.**

True. Due to the heavy canopy of branches, less sunlight can penetrate an old growth stand. This is beneficial, as it prevents rapid run-off that could cause erosion and flooding.

11. **"New forestry" is another name for the practice of clear-cutting.**

False. The new forestry, advocated by foresters such as Jerry Franklin of the University of Washington, suggests leaving living trees and debris in a harvest area to stimulate the growth of fungi and microbial organisms, and to provide habitat for smaller mammals. Decaying wood is an important component in the nutrient cycling process.

12. **Washington State exports more softwood raw logs than any country in the world.**

True, according to a story in *The Seattle*

Times, March 31, 1993. (Softwood refers to coniferous trees.) Approximately 40 percent of the timber harvested in Washington is shipped overseas as raw logs by private landowners. Congress placed limits on raw log exports from state lands, starting January 1, 1991. Initially, Washington was allowed to export 25% of logs from Washington state lands. Then the law banned all exports from state lands. There has been a ban on export of raw logs from federal lands for about 20 years. Most logs are shipped to Japan, South Korea, and China, with by far the most going to Japan.

In May 1993, the Ninth Circuit Court of Appeals struck down the federal law restricting exports from state lands, on the basis that the law allowed Congress to instruct state officials to regulate the timber industry according to Congress' instructions, in violation of the 10th amendment (which reserved powers not delegated to the federal government to the states). Congress amended the law in June 1993 to avoid this Constitutional challenge and restore the ban on the export of raw logs from state lands. At this point, only private landowners may export raw logs from Washington.

Why are logs exported? Because of high prices paid overseas. As of May 1993, export log prices were $1000 to $1300 per 1000 board feet, as compared to $500 to $700 paid by domestic saw mills, according to Jennifer Belcher, Washington State Lands Commissioner. (*The Seattle Times*, 5/5/93)

Also, raw log exporters take advantage of favorable tax treatment. President Clinton has proposed eliminating the tax subsidies given to private exporters of unprocessed logs.

13. **Nurselogs are logs that baby animals are drawn to when their mother abandons them or is killed.**

False. Nurselogs are fallen, rotting logs on the floor of an old growth forest. Tree seedlings grow out of the downed trees as they decay, therefore they are called nurselogs. They are an important component of the old growth ecosystem.

■ **Tell students** that now that they have some information about the forest, they will have an opportunity to express their opinions about the controversy surrounding the forests. Pass out the Opinion Poll, and ask each student to write "SA" for strongly agree, "A" for agree, "D" for disagree, "SD" for strongly disagree and "U" for undecided beside each of the statements. Inform students that there are no right or wrong answers, and that every opinion is worthwhile, as long as the student can give reasons for that opinion.

■ **Draw a chart** on the board to record students' opinions as they are polled. First get a hand count of how many agree with Statement "1", then how many disagree, how many are undecided. After the entire chart is completed, go back to the first statement, and ask for student reasons. Ask those who are undecided what makes it hard for them to decide. Ask one of the ones who agrees or disagrees to respond to that difficulty.

Alternatively, as you call out each question, ask students to line up along one side of the room, where you have posted signs for "Strongly Agree," "Agree," "Undecided," "Disagree," and "Strongly Disagree." Students standing at opposite ends of the continuum should be asked for their reasoning, and to respond to those with whom they disagree.

■ **After students** have provided their arguments and reasoning about each statement, you should inform them of the information provided below about each statement.

Supplementary Information for Opinion Poll

1. **Our national forests should be used primarily as an economic resource (to build houses, etc.) and put to use in a way that will serve the most people.**

In 1891, Congress gave the President authority to create forest "reservations." Congress decided that our forests should be managed to protect watersheds (the region from which a river draws its water supply) and "to furnish a continuous supply of timber for the use and necessities of citizens of the United States." In 1905, President Theodore Roosevelt, an ardent conservationist, gave authority for managing the forest reservations to the U.S. Forest Service, and appointed Gifford Pinchot as its first chief.

This statement reflects the view of Gifford Pinchot, and represents the view of many foresters today. Pinchot believed in scientific forestry, and that if the forests were managed properly, a continuing supply would support demand. Some say Pinchot would be disappointed with today's management of our national forests.

John Muir, the founder of the Sierra Club, held the opposite view, that the forests should be preserved as wilderness areas.

2. **Logging should be banned in old growth forests, even if loggers will lose their jobs.**

This is the view of many environmental and conservation groups today, who believe that the remaining old growth forests must be preserved as habitat for wildlife and other natural resources, and for recreation.

3. **Wilderness and old growth forests are a spiritual resource, and should be protected as a sanctuary where people can go to escape the noise of the city.**

This is another view of those who seek to preserve the forests. The forests play an important role in the religion and beliefs of Native Americans of the Pacific Northwest. In Native American traditional belief, the tree and the forest are living beings.

4. **There is enough old growth already saved in wilderness areas and national parks. The remaining old growth forests on public land should be available for the forest products industry and the American consumer.**

This is the view of many timber industry groups today.

5. **If the spotted owl becomes extinct, like the dinosaurs did, that's just evolution, and cannot be helped.**

This is the view of many timber industry people, loggers, and others who depend on old growth timber for their livelihood. Many loggers feel they, as loggers, are becoming extinct, without sufficient timber to cut to make a living. You might ask students "have other professions become extinct?" (blacksmith, scrivener) Is this the same as the logger? (You might point out that the

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"extinction" of the logger affects entire communities, whereas usually there were only one or two blacksmiths in a community.)

Environmentalists, on the other hand, say that more than the owl is at stake because the owl is an indicator species for the entire ecosystem within old growth forests. "Indicator species" means that the ability of the owl, which is near the top of the food chain, to survive, is an indication of how the entire ecosystem is doing.

■ **Pass out** the letter to *The Seattle Times* about the spotted owl controversy. Ask students to read the letter and respond to the following questions.

1. **What is the complaint that the author of this letter is making?**

The author is complaining that the article in the paper, particularly the headline, misrepresented what the issue in the spotted owl controversy really is—the loss of our old growth forests—and sensationalized it as simply jobs vs. owls.

2. **What does the author predict about the logging industry?**

The forest industry is doomed anyway because there will soon be no logs left to harvest because cutting has exceeded the rate of reforestation.

3. **According to the author, why is it so important to act now?**

Unless cutting of the old growth forest is stopped soon, old growth forests will disappear.

4. **Do you think the author is exaggerating or misrepresenting the issue?**

The author ignores other factors that have contributed to the loss of our forests and wildlife, such as development.

5. **What is the role of the legislation to preserve the spotted owl in the author's opinion? Why does she call it a "legal tool"?**

The legislation being used as a "legal tool" is the Endangered Species Act, a federal law that protects the spotted owl from activities that could lead to its extinction. The term legal tool refers to the use of laws to protect the owl for a larger purpose—to protect the entire forest, and in the author's words, the entire planet.

6. **Do you agree with the rewritten headline: "Small down-payment to save the Earth: 28,000 jobs?"**

This calls for an opinion.

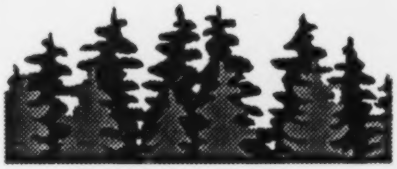
7. **What other threats to our forest resource exist?**

Unbridled growth has contributed to the loss of wildlife habitat and forests.

Extension

Have students write a letter to the editor of your local paper, stating their views about the issue. You might want to wait to send the letters until after the completion of the unit, as students may revise their opinions after further study.

Old Growth Forests/Pretest



Directions: Write the word TRUE in the blank if you believe that the statement is correct. Write FALSE in the blank if you believe the statement to be incorrect.

________ 1. An old growth forest is any forest in which most trees are older than 100 years.

________ 2. Most remaining old growth is on publicly-owned federal land, such as national parks.

________ 3. The national forests belong to you and me, as citizens of the U.S.

________ 4. Our national forests and the U.S. Forest Service were created for the sole purpose of preserving forests and the trees within them.

________ 5. Dead trees are of no value in an old growth forest.

________ 6. Tree farms grow wood more efficiently than old growth forests.

________ 7. The old growth forests of the Olympic Peninsula of Washington State are temperate rainforests, and receive as much as 180 inches of rain a year.

________ 8. Old growth forests are "biological deserts," meaning there is little animal and plant life within them.

________ 9. A pair of nesting spotted owls requires approximately 5,000 acres (which is about 8 square miles—a little bigger than Mercer Island) of old growth forest for their hunting grounds.

________ 10. It takes longer for snow to melt in an old growth forest than in a clear cut area.

________ 11. "New forestry" is another name for the practice of clear cutting.

________ 12. In 1988, almost 4 out of every 10 trees harvested in Washington State were shipped overseas as raw logs.

________ 13. Nurselogs are logs that baby animals are drawn to when their mother abandons them or is killed.

Opinion Poll — Old Growth Forests

Directions: Read the following statements and place the letter that most closely corresponds with your opinion in the left-hand blank.

SA (Strongly Agree), **A** (Agree), **U** (Undecided), **D** (Disagree), or **SD** (Strongly Disagree). There are no right or wrong answers—every opinion is good when you can give reasons for that opinion.

________ 1. Our national forests should be used primarily as an economic resource (to build houses, etc.) and put to use in a way that will serve the most people.

________ 2. Logging should be banned in old growth forests, even if loggers will lose their jobs.

________ 3. Wilderness and old growth forests are a spiritual resource, and should be protected as a sanctuary where people can go to escape the noise of the city.

________ 4. There is enough old growth already saved in wilderness areas and national parks. The remaining old growth forests on public land should be available for the forest products industry and the American consumer.

________ 5. If the spotted owl becomes extinct, like the dinosaurs did, that's just evolution, and cannot be helped.

Owls vs. Jobs?

A Letter to the Editor of *The Seattle Times*

The Times' front-page headline, "Price to save owl: 28,000 jobs." (May 4, 1990), is yet another flagrant example of journalism designed to inflame and manipulate rather than inform.

The reader is being asked to question whether it is reasonable to sacrifice 28,000 jobs for 1,500 pairs of nesting spotted owls. But that is clearly not the issue and you know it, as do [the] reporters.

Regardless of the fate of the owl, the jobs based on the forest-product boom are doomed for a very simple reason: The rate of harvesting in Northwest forests has vastly exceeded the rate of reforestation, requiring continued decimation of old-growth forests, 90 percent of which have already been destroyed. "Sustainable yield" and "renewable resource" are cruel hoaxes foisted on the public by the timber industry. Touring our state by car or, most revealingly, from the air leads even the casual observer to the conclusion that our magnificent forests are rapidly being converted to a giant stump farm.

The forest resource is disappearing, and the only question is whether we will lose jobs now while we still have an ancient forest ecosystem, with owls, or in the future when it has been destroyed. This is only the beginning. Preservation of other ecosystems upon which our survival depends will require enormous economic and social upheavals, nationally and globally. Legislation to preserve the spotted owl is merely the legal tool to force us to do what we appear to be unable to do by enlightened and creative action; namely, to save our planet.

Your headline would have been infinitely more accurate had it read: "Small down-payment to save the Earth: 28,000 jobs?"

1. What is the complaint that the author in this letter is making?
2. What does the author predict about the wood products industry?
3. According to the author, why is it so important to act now?
4. Do you think the author is exaggerating or misrepresenting the issue?
5. What is the role of the legislation to preserve the spotted owl in the author's opinion? Why does she call it a legal tool?
6. Do you agree with the rewritten headline: "Small down-payment to save the Earth: 28,000 jobs?"
7. What other threats to our forest resource exist?

LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Old Growth Forests

Lesson 2

Objectives

- Students will define a "threatened" and "endangered" species.
- Students will review major provisions of the Endangered Species Act.
- Students will debate proposed amendments to the Act.

Materials

Copies of handouts:

- Newspaper articles
- Proposed amendments

Time Required

2 to 3 class periods. (For younger classes, or to save time, you may choose to omit the Senate hearing activity part of this lesson.)

Procedures

■ **Write "Endangered Species Act"** on the board and ask if anyone knows what it is. Why was it passed?

> The Endangered Species Act (ESA) is a federal law that was first passed in 1973 to protect species of plants or animals that are threatened by extinction. Since the passage of the Act more than 600 American species have been listed as either endangered or threatened. Since 1973 six species that were listed have been removed because they recovered (including the American alligator) and seven have been removed because they became extinct.

■ **Ask** what "endangered species" means.

> "Endangered species" is defined in the Act as "any species which is in danger of extinction throughout all or a significant portion of its range."

■ **How does** this compare with a "threatened species"?

> "Threatened species" is defined in the Act as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Both endangered and threatened species receive protection, but some sections of the Act do not protect threatened species on the same basis as endangered species.

■ **Ask students** if they can name any species that have been listed as endangered or threatened under the Act.

> More than 1000 species of plants, animals and fish have been listed under the Act since it was enacted in 1973. Probably the most infamous species listed in the last few years was the snail darter, a tiny fish that delayed construction of the

Tellico Dam in Tennessee for two years in the late 1970s.

Other species that have been listed as endangered or threatened under the Act include the bald eagle, peregrine falcon, sea otter, gray wolf, red wolf, condor, grizzly bear, Florida panther, black footed ferret, and whooping crane.

■ **Why is it important** to protect species from extinction?

Genetic diversity is the major rationale for saving species from extinction. The diversity of species is a potential resource to the planet. As the U.S. Supreme Court stated, these species are "keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask." [From *TVA v. Hill*, 437 U.S. 153, 180 (1977) (the case about the snail darter).] There are many medical applications of chemicals derived from animals and plants, including anticancer agents, antibiotics, antiviral agents, anticoagulants, contraceptives, and antivenoms.

The importance of maintaining natural genetic variation was recognized by Congress in passing this law. When Congress passed the Endangered Species Act, it cited the rising extinction rate in the U.S. and the world. At the time the law was passed in 1973, the extinction rate was thought to be one species per year. In 1979, the rate was estimated to be one species per day. Recently, one expert predicted the future rate of extinction to be one hundred species of plants and animals per day. [Linden, "The Death of Birth," *Time*, Jan. 2, 1989, at 32.]

■ **What does the Endangered Species Act** have to do with logging and old growth forests?

There is no law that protects old growth forests just as forests. Although the Act might protect an individual species of tree in a forest declared "endangered," it does not protect entire forests. Therefore, the Endangered Species Act has been used by environmentalists in the battle to protect these forests. Scientists first noted that the northern spotted owl might be endangered in 1973. Since that time further studies have shown that the owl probably cannot survive outside of old growth forests.

■ **How do we decide** what species should be listed as endangered or threatened?

The U.S. Fish and Wildlife Service (FWS), a division of the Department of the Interior, is the federal agency that is charged with enforcing the Act in regard to terrestrial and freshwater species. FWS is directed by the law to consider scientific data and determine whether a species is endangered or threatened. The law says that any economic consequences of listing a species are not to be considered. Thus, the consequences of a cutback in logging were not supposed to be taken into account in deciding whether or not to list the spotted owl.

In fact, economic considerations were considered. A lawsuit was filed by 25 environmental groups, *Northern Spotted Owl v. Hodel*, to require the U.S. Fish and Wildlife Service to list the owl as a threatened species. The Service had delayed for years in making a decision about the owl, and then decided that it was not endangered. In 1988, a federal court judge in Seattle ruled that the Fish and Wildlife Service's decision not to list the bird as endangered or threatened was "arbitrary and capricious," and ordered the Agency to go back and study the matter again. Later, the General Accounting Service found that the Service had rewritten portions of a major study, taking out critical portions suggesting the owl was endangered. It was not until June 1990 that the owl was finally listed as "threatened." (The decision that the owl is threatened rather than endangered does not have any significant effect on the protections that the bird is entitled to.)

The law requires the FWS to protect a species, once it is determined to be endangered or threatened, from any activity that would jeopardize its existence. At the same time that the FWS determines that a species is threatened or endangered, it is required to designate its "critical habitat." This is the area essential to the conservation of the species, with the goal being that the threatened species will recover to the point where it no longer needs to be protected under the law.

This means that logging on lands known to be the home of spotted owls would be prohibited. This includes both public and private lands. Since each pair of nesting owls requires somewhere between 2500 and 8000 acres of old growth forest to forage for its prey, a large amount of old growth must be preserved if the spotted owl is to survive.

■ **Tell the class** that even though economic considerations may not be considered in deciding whether to list a species, they may be considered in determining the owl's "critical habitat," under an amendment made to the Act in 1978.

Some say that the Act should be amended to allow economics to be taken into account in the listing process as well. Others say that the consideration of economics should not be considered even at the stage when critical habitat is designated, and that the Act should be amended to remove the consideration of economics at any stage. Finally, others argue that the entire law should be amended to take an "ecosystems" approach, rather than focusing on individual species. Some of these views are found in the newspaper articles discussed below.

■ **Tell students** that after some research they will be roleplaying a legislative session in the U.S. Senate, Environment and Public Works Committee, where the Endangered Species Act is being considered for reauthorization. (The Act actually is up for reauthorization in 1993-94. The House committee with jurisdiction over the ESA is the Merchant Marine and Fisheries Committee.) Several amendments have been proposed, three of which are found in the handout "Proposed Amendments." (These are not the real proposed amendments.)

To prepare for the Senate hearing, ask students to read the newspaper articles and highlight important information. [Depending on the level of your class, you may want to make this a group activity: Divide the students into groups of 4-5 students, and have each group read and discuss two articles. Tell them they are to become experts on the information in their two newspaper stories, and will be responsible to teach it to other students later. After the original groups have had time to read and prepare—about 30 minutes—jigsaw the groups (number off in the original groups and reconfigure new groups consisting of all "1's" etc.) and let each student teach the others all important information from the articles he or she read.]

■ **After all students** have either read individually or learned about the articles in groups, divide them into small groups of 3 to 5 students each. Assign one group to be proponents of Amendment A; another group to be proponents of Amendment B; and another group to be proponents of Amendment C. The rest of the groups will be senators on the committee that will hear and vote on the amendments.

■ **Tell the groups** to read their amendments, review the newspaper articles, and prepare arguments for why their amendment should be passed. Each group might want to choose a name for itself. Information from the newspaper articles should be used in the arguments. The Senate committee groups should read the amendments, review the articles, and prepare at least three questions to ask each of the three groups. They may also revise the proposed amendments, if they wish, or offer an alternative amendment. The senators should choose names for themselves as well.

■ **Set up the room** for a hearing, with seats for the committee in front, facing the class. All of the senate groups will join to form one committee. Have the committee choose a chairperson, or appoint one yourself. Each group should appoint a spokesperson to make a presentation for their group. Tell the groups they will have 5 minutes each to make their presentation. The chairperson should keep time, or appoint a timekeeper.

■ **After hearing** from each group, the chairperson should allow debate among the senators on each amendment by asking each senator to state what he or she sees as strengths and weaknesses of the proposed amendment. The chairperson should take a voice vote on each amendment after it has been discussed. Senators will vote on whether or not they are recommending that the amended bill be sent up to the full Senate with a recommendation for passage. If none of the proposed amendments is passed, the Senators may offer their own amendments at this time.

■ **Ask the class** if they now understand why we call the owl a "legal tool"? Discuss.

Endangered Species Reform

Sacramento Bee
January 14, 1993

After 20 years, the Endangered Species Act is expiring. So long as George Bush held the White House, environmentalists have been loath to seek renewal for fear that the effort would be rejected or that the act itself would be gutted through amendments in Congress that the president approved.

With the advent of a more environmentally sympathetic Clinton-Gore administration, there's a much better chance that the act will get the extension environmentalists want—as well as some long-overdue reforms that good public policy requires.

The act, for starters, needs to be expanded in scope and better balanced in its application in order to reflect both practical and natural reality. Currently, it treats each species in isolation, and often allows intervention on their behalf only when it's too late to preserve them except through the most extreme actions. That's led to a series of wasteful conflicts over snail darters, spotted owls, giant garter snakes and scores of other species. And it will only get worse.

The number of potentially threatened plants and creatures is so vast and the operation of the act so heedlessly inexorable that eventually almost all human activities could be brought to a halt—even those that are supposed to be environmentally beneficial. What gives way, for example, when environmental efforts to save salmon populations upstream of the Delta threaten the Delta smelt—or when environmental efforts to divert water away from farming and back into rivers destroy valuable habitat?

Even many environmentalists agree that the act needs to be revised to address the needs not of individual species so much as whole ecosystems. That means allowing for a balancing of competing interests—even when some of those interests are human and commercial. It may also mean allowing some changes to occur in the current enumeration of species. That kind of approach is anathema to the act as it's presently written, but it's a lot closer to how nature really works.

At the same time, the operation of the U.S. Fish and Wildlife Service needs overhauling. Under the act, USFWS currently has the power to initiate its own investigations, prosecute its own findings, judge the adequacy of its own cases and then execute its own decisions. Federal officials have had some successes to be sure—as in the case of the gray whale, which the National Marine Fisheries Service recently declared "fully recovered." But so much arbitrary power has led to some terrible blunders—with sea otters, for example—and the bureaucratic bungling that resulted in the destruction of millions of salmon in California by the fish and wildlife agency.

Worse, since the act mandates federal officials to take the narrowest perspective in ministering to the needs of endangered species—and severely restricts any appeal of their decisions—it has encouraged zealotry, bad science and lots of politics in a process that was supposed to be competent, objective and impartial. Balancing economics and the environment, reining in bureaucratic excess and establishing a sense of equity for all species isn't going to be easy. But judging by the last 20 years, nothing less in the way of reform will do.

The Sacramento Bee, 1993. Used with permission.

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Going, Going ...

By Robert Cooke
Newsday
January 5, 1993

MAYBE IT'S ALREADY past time for another Noah to begin loading up a creaky, overcrowded ark. Even before a boat is built, and without the threat of a punishing rain, species are going extinct at an alarming clip, too late to march two-by-two up any gangway.

"Species are disappearing at an ever increasing rate, faster than the rates of evolutionary replacement," warned chemical ecologist Thomas Eisner of Cornell University. Worse, he said, because of too little study and too much ignorance, no one's even aware of all the richness being lost.

Entomologist Edward O. Wilson agreed: "The biological diversity of the world is being eliminated rapidly." By one estimate, he said, one-half of one percent of the organisms in the tropical rain forests get pushed into extinction annually, many disappearing before being found and named, much less studied. Wilson, of Harvard University, is author of a new book, "The Diversity of Life."

The rapid demise of species—and the genes that make them distinct—is what spurs squads of ecologists and environmentalists to urge that the U.S. Endangered Species Act be protected from attack, or even strengthened when it goes before Congress this year for reauthorization.

At the same time, the act's provisions, which slow land development, hamper logging and seemingly make strange weeds almost sacred, have stirred the ire of industry, commercial developers and ordinary landowners. They seek changes making the act, which has been on the books since 1973, less restrictive.

"We think it [the act] is not working properly," said Barry Polsky, a spokesman for the American Forest Council, a timber industry organization. "It needs to be amended, particularly to provide more fairness. It comes down more harshly on private property owners than it does on the federal government."

Polsky said the act also needs amending because "of the need for greater concern for its economic and social impact." For example, he said, "what you have in the Pacific Northwest is the potential destruction of a rural economy based on timber harvesting."

Kathleen Hartnett, of the National Cattlemen's Association in Washington voiced similar sentiments. "We think the act is in need of significant amendment and reform. We don't think it's accomplishing its original mission to protect and effectively recover endangered plants and animals."

"In general," she added, "we need to be more realistic," and an amended law should provide incentives for landowners to participate in species protection, rather than prohibitions and heavy penalties. Also, "we need to know what things are going to cost, and make intelligent decisions on the basis of that."

The Endangered Species Act is considered by conservationists to be the next best thing to an actual ark. It uses words on paper, plus legal clout, to shield fragile species far more effectively than zoos and captive breeding programs can. It keeps the bulldozers, sometimes, off delicate land. It slows the clear-cutting of ancient forests. And it protects declining species such as tortoises, pupfish and an obscure plant in Maine called the Furbish lousewort.

It is also controversial, because the lifestyles of species such as the northern spotted owl collide directly with the employment of loggers in Washington, Oregon and northern California. The act can also slow the conversion of coastal marshes into marinas, hamper the use of public lands for grazing, deter the sale and development of fragile desert lands, and make difficult the placement of telescopes on ecologically delicate mountain peaks.

"I don't think anyone would say it's a perfect law," said Mark Shaffer, vice president for research at the Wilderness Society. "But if you give up the protection it supplies, we're just going to lose a lot of things."

He said the act "is the only legal tool available to protect certain types of wildlife, such as plants, and most invertebrate animals, such as butterflies."

Shaffer noted that "the most controversial part of the act is that it's the only wildlife law I'm aware of that provides the government with some jurisdiction over land use," which is particularly anathema to those who consider property rights almost absolute.

At present, he said, 740 different organisms are listed as either threatened or endangered. Now there's also promise that another 400 species will be added. Some of the 400 or so species waiting to be listed have already

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gone extinct, said David Wilcove, senior ecologist with the Environmental Defense Fund.

Wilcove said he expects the new Congress will take up debate on reauthorization of the Endangered Species Act, which doesn't expire, but which requires repeated authorization for funding.

As that effort begins, he predicted, "there will be an effort on the part of the environmental community to strengthen the act." Simultaneously, he expects "loggers, developers, ranchers and a collection of commodity interests will try to seriously weaken it. They will push to eliminate protection of subspecies" such as the northern spotted owl, grizzly bears in the northern Rocky Mountains, and the Rocky Mountain wolf.

"We can also expect them to push to make it easier to get exemptions to the act," Wilcove said.

Despite the strong objections from business and industry, ecologist Lynn A. Maguire, at Duke University, thinks the Endangered Species Act "has been quite effective in a number of cases," in part because "it has been useful in changing the behavior of both private and public land users."

As the dispute continues, however, there is little argument and less doubt that some of the numbers are grim. According to ecologist J. David Allen, of the University of Michigan, and zoologist Alexander S. Flecker, of the Otago University in New Zealand, the fresh water rivers and streams of America are both rich in species and severely imperiled.

Writing in the January 1993, issue of BioScience, a publication of the American Institute of Biological Sciences, they report that the nation's fresh water habitats "face catastrophic losses." The rivers and streams "historically harbored an exceedingly high diversity of river snails and mussels and clams. The freshwater mussels of North America include 247 species and subspecies, of which 13 currently are extinct, 40 are endangered, two are threatened, and 74 are federal candidate species."

As a result, they said, "this abundant and diverse fauna, which once served as an important food source for Native Americans and supported a commercial harvest for the manufacture of buttons, has been devastated by dam construction and degradation of water quality."

Eisner noted that "my gut says that ethics and aesthetics should be sufficient reasons" for trying to avoid causing extinctions, "but that hasn't ruled" for many years. So instead, Eisner appeals to commercial self-interest, pointing out that studying the chemistry of unknown plants must have enormous payoffs.

Already known, of course, are plant sources for quinine, digitalis, morphine, reserpine and curare. Rubber, of course, comes from trees, as does the new anti-cancer drug taxol.

"Species extinction takes on special meaning in this context," Eisner said. "Nature's chemical treasury is literally vanishing before it can be appraised. I find this reality appalling." Because of chemistry alone, he said, reauthorization of the Endangered Species Act "should be a matter of high national priority."

Wilson, the Harvard entomologist who founded the field of sociobiology, pointed out how ignorant we really are of the species around us.

"We don't even know the number of species" which exist "to the nearest order of magnitude," Wilson said. "We don't know whether [the number of species] is ten million or closer to one hundred million; that's how little we've explored the world."

Perhaps botanist Peter H. Raven, director of the Missouri Botanical Garden, put it best:

"The kind of world that our descendants will inhabit a few decades from now," he wrote in the 1992 Earth Journal, "will depend directly on the actions we decide to take now."

Raven warned that worldwide "some 50,000 kinds of plants may vanish during the next thirty years or so, out of a world total of 250,000. Most of them will never have been examined in detail" because most exist in areas where there is no systematic process for evaluating plants.

"With such riches within our grasp," he said, "it seems all but inconceivable that we are not taking steps to secure them while they are still there."

Matter of Survival

Some species that are endangered and those that have met the goals for recovery from the list:

Still Struggling...

- Black-footed ferret: The predator depends on prairie dogs for food but eradication campaigns have taken away the ferret's food source.
- Whooping cranes: The migratory pathway from Canada to their winter home in Texas is subject to many hazards.
- California condor: They are being breed in captivity—20 to 30 exist—for release back into the wild.
- Razorback sucker: Found in the Colorado River basin, the fish is endangered due to habitat loss and competition with non-native fish.

On the Rebound

- American alligator
- Palau dove, Palau fantail, Palau owl (Pacific Island birds)
- Rydberg milk-vetch plant

SOURCE: Interior Department

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Carpenter's Union Endorses Tauzin Endangered Species Act Reform Bill

Urges Congress to Support Balanced Approach to Species Protection

October 5, 1992

Denny Scott, staff economist at the United Brotherhood of Carpenters and Joiners of America (UBCJA), announced the 550,000-member union's support for the Endangered Species Act (ESA) Reform Amendments introduced today by Reps. Billy Tauzin (D-La.), Jack Fields (R-Tex.) and 17 bipartisan co-sponsors. The UBCJA's position on the act is consistent with that of the 14 million-member American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

"We support species protection and reauthorization of the Endangered Species Act, and we believe that the Tauzin-Fields bill best balances the goals of species protection with social, human and economic realities," Scott said at today's press conference following the introduction of the bill.

Tauzin and 18 bipartisan co-sponsors introduced "The Endangered Species Act Reform Amendments of 1992" in an effort to add needed balance to the act, which is slated for reauthorization by Congress next year. The Tauzin bill retains the act's emphasis on making scientific considerations the sole criteria for deciding which species to list as endangered or threatened, but would require the U.S. Fish and Wildlife Service to consider social and economic impacts in its recovery planning options.

Scott explained that the act has been misused and interpreted far beyond its original intent. In the past, species protection has had limited geographic impact, but with the listing of the spotted owl as a threatened species, 7 million acres of "habitat" have been set aside—wreaking havoc on the timber industry and families in the Pacific Northwest.

"Our union is greatly concerned about the way the act is currently being implemented," Scott said. "Thousands of our members in the Pacific Northwest have already lost their jobs as a result of protection plans for the Northern Spotted Owl. Representative Tauzin's bill is an opportunity to effectively balance wildlife protection with the human, social and economic costs involved with such protection."

Together with the Endangered Species Coordinating Council, The UBCJA has worked closely with Tauzin to develop a balanced approach that protects species without causing widespread job loss and economic dislocation.

Key points of the reform bill include ensuring that: 1) human concerns become an integral part of species protection and recovery efforts; 2) science, not politics, dictate listing decisions and recovery programs; 3) the rights and livelihoods of people affected by the ESA are carefully considered; and 4) incentives complement regulation as the primary means of protecting species.

"Times have changed since the ESA was passed in 1973," continued Scott. "The law must be reformed to reflect changing times. We encourage all members of Congress to carefully review this important legislation and urge their support of this balanced approach to species protection."

Endangered Species Act Isn't Bad News for Business

St. Petersburg Times
September 27, 1992

President Bush made it official recently: Speaking to loggers in the Pacific Northwest, he promised to block the renewal of the Endangered Species Act unless it is rewritten to be kinder to economic interests.

"The Endangered Species Act was intended as a shield for species against the effects of major construction projects like highways and dams, not a sword aimed at the jobs, families and communities of entire regions like the Northwest," Bush said. "It's time to put people ahead of owls.... No more studies, let's change the law."

Congress probably won't get around to reauthorizing the 19-year-old law until after the November elections. Bush may be out of a job himself when that happens. Bill Clinton says he has no plans to change the law, but he suggests holding a summit to work out differences between protecting the environment and logging jobs.

The governor, like the president, is just playing politics. Job losses in the Northwest have more to do with the recession and timber industry changes than protecting owls. The Endangered Species Act, despite what vote-hungry politicians are saying these days, hasn't been death to businesses.

The act already takes into account the economic impact of protecting wildlife. And only rarely has it stopped a project cold. "That's one of the myths about the law," says Michael Bean, an attorney for the Environmental Defense Fund in Washington. "The remarkable thing about the Endangered Species Act isn't how many controversies there have been, but how few."

Between 1987 and 1991, federal agencies reviewed 34,600 applications for projects that might harm protected species or the habitat they require for existence. Only 19 projects were stopped.

A compromise is reached in virtually every case where the needs of wildlife go head to head with the needs of people or business. Projects might be modified, but seldom are they prohibited.

The federal government did not put out of business the shrimpers who were killing thousands of protected sea turtles in their nets. The National Marine Fisheries Service required them to install turtle-excluder devices. TEDs funneled turtles out of nets without lowering the shrimp harvest. In fact, the shrimp catch went up, according to a two-year study.

Only one part of the Endangered Species Act specifically excludes economics as a factor. That's the initial decision whether to put a plant or animal on the list of "threatened" or "endangered" species. By law, the secretary of interior makes the decision based solely on scientific fact. The species is either in danger of extinction or it's not.

But once the decision is made to protect a species, economic factors are taken into account, according to the Environmental Defense Fund, a coalition of scientists, business people and lawyers who try to create economically viable solutions to environmental problems.

Land may be excluded from designation as "critical habitat" if the costs of doing so outweigh the benefit to the species. For example, the government might refuse to pay millions of dollars to buy land required to save one bald eagle if lands elsewhere provide adequate eagle habitat.

Private landowners may obtain federal permits allowing them to even kill a listed species in the course of developing their property—if the harm is incidental and the landowner has a long-term plan to minimize the impact of the development on wildlife.

If a federal wildlife agency determines that a project will jeopardize the survival of a listed species, it has to suggest "reasonable and prudent alternatives" that will not result in jeopardy. The alternatives have to be economically feasible, like turtle excluder devices.

In cases when no reasonable and prudent alternatives exist, the Endangered Species Committee, or "God Squad" as it is sometimes called, can completely exempt a project from the act even if completing the project may drive a species to extinction. The God Squad last spring voted to allow some logging on federal land even if it destroyed critical habitat of the threatened spotted owl.

Yet for some people, the Endangered Species Act still doesn't protect business enough. The Bush administration, led by Interior Secretary Manual Lujan, complains that the law is too tough.

A number of proposed amendments to weaken the law are floating through Congress. One would allow the interior secretary to use economic factors in the decision to put a species on the protected list. Since it is usually impossible to put a monetary value on wildlife—how much is a bald eagle worth, after all?—the amendment would gut the law.

A better proposal, sponsored by Rep. Gerry Studds of Massachusetts, would improve the current law by providing more funds to study which plants and wildlife deserve protection.

That's one of the weaknesses of the act. More than 600 species are protected by the law, but as many as another 3,000 species might belong on the list. Government wildlife agencies lack the money to do necessary studies.

There are two other weaknesses that should be addressed.

First, while the law prohibits the killing, taking and harassing of protected species, it says nothing specific about destroying a species' habitat. Still, in practice, the law usually does protect habitat—on federal lands. But it seldom adequately protects habitat on private property. In Central Florida, thousands of acres of scrub along the Lake Wales Ridge is being developed to the detriment of threatened scrub jays. Wildlife officials say it can be hard to legally prove that bulldozing a scrub is the sole cause of a scrub jay's demise. It's easier to buy private property than to enforce the law on it. But there's little money to buy it.

Secondly, the law provides virtually no protection for listed plants on private property. On the Lake Wales Ridge, about a dozen plants found nowhere else on Earth are disappearing under orange groves and subdivisions. The way the law is structured, a landowner can do what he or she wishes with plants.

In the Pacific Northwest, the fight to save the spotted owl has been especially nasty. The logging industry claims as many as 32,000 jobs are at stake and blames the owl. The Bush administration has jumped into the fray and blamed the Endangered Species Act. But it's dishonest to blame either.

Logging jobs have been disappearing for years because the forests are. The Southeast is replacing the Northwest as the nation's timber capital. In Oregon and Washington, the logging industry has cut 87 percent of old-growth forests since the century began. Unsustainable logging practices eventually would doom the industry even if there were no spotted owls.

The Endangered Species Act isn't perfect, but it works most of the time and manages to protect business and wildlife both. Nowhere is that more true than in Florida.

The American alligator has recovered completely. So has the brown pelican. When the law went into effect in 1973, there were 300 nesting eagles. In 1990, there were almost 1,100. In 1974, there were 50 snail kites. Today, there are about 600.

In 1973, about 7-million people lived in Florida. In 1990, there were 13-million of us. A reasonable person might argue that the Endangered Species Act did nothing to hamper growth.

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Poll Indicates Majority of Americans Unwilling to Sacrifice 10,000 Jobs or More to Protect Endangered Species

PR Newswire
August 12, 1992

Two-thirds (68 percent) of American adults would be unwilling to see as many as 10,000 jobs lost to protect an endangered species, according to a new national poll.

And 75 percent of those polled believe the Endangered Species Act should be amended so that job protection and other economic costs are considered when species are identified for protection.

The poll, released today, was conducted for the Timber Industry Labor Management Committee by Opinion Research Corporation of Princeton, N.J. It is believed to be the first poll that attempts to measure national attitudes on how endangered species concerns impact on specific jobs-related questions.

"This poll duplicates what we learned in earlier opinion samplings in Oregon, Washington and California, where vast majorities oppose 10,000 or more job losses over protection of the northern spotted owl," said Mike Draper, executive secretary of the Western Council of Industrial Workers.

"People all over the country, not just in the Northwest, want to see some balance brought to the endangered species debate," Draper said. "They realize that peoples' lives are as important as plants and animals."

The poll results were released by Draper during testimony he delivered before a Senate Environmental Protection Subcommittee hearing on S. 2762, The Northwest Economic Stabilization Act, which would reduce job losses anticipated from the Interior Department's spotted owl recovery plan.

In commenting on the poll results, Mark Rey, executive director of the American Forest Resource Alliance, said they confirmed the views of those who support the bill and the idea that the economic impacts in the recovery plan are too severe.

The Interior Department's draft recovery plan would cause the loss of about 32,000 jobs on federal forest lands alone. S. 2762, introduced by Sen. Slade Gorton (R-Wash.), would halve that number.

The poll also showed that 56 percent of respondents would be less willing to vote for a member of Congress who supported a species protection plan that would cost 10,000 jobs. That percentage jumped to 70 percent if the job loss figure was increased to 25,000 workers.

In addition, 70 percent of those polled would be less willing to vote for a congressman who would support a species protection plan when, in addition to job losses, local and state governments and schools would lose revenue and taxes might go up.

Opinion Research Corporation surveyed 1,003 persons by telephone from Aug. 6-9. A total of 501 men and 502 women aged 18 and older were questioned. The margin of error was 3 percent or less.

The 30,000-member Western Council of Industrial Workers is headquartered in Portland, Ore.

The American Forest Resource Alliance, representing management in the forest products industry, is headquartered in Washington, D.C. CONTACT: Jeff Joseph for the Western Council of Industrial Workers, 202-452-9431, or Barry Polsky of the American Forest Resource Alliance, 202-463-2467

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Interior Secretary Is Pushing a New Way to Save Species

By William K. Stevens
The New York Times
February 17, 1993

To head off conflict over endangered species, Interior Secretary Bruce Babbitt is preparing a major policy shift in the Interior Department's focus on wildlife protection.

He hopes to avert what he calls "national train wrecks" in disputes like the one over the spotted owl in the Pacific Northwest by avoiding having to impose emergency measures to protect suddenly endangered species. Instead, he seeks a policy based on preventive measures to insure long-term protection of whole ecosystems and all their inhabitants.

"We need to step back and look at the entire ecosystem and ask, 'Is it possible to intervene before the crisis?'" Mr. Babbitt testified yesterday before the House Natural Resources Committee in Washington.

Negotiated Settlements

In an interview last week, he declared his intention to try to devise plans that would stop the decline of species before it became necessary to list them as threatened or endangered. This, he said, might avoid "the downward spiral of listing, and then the long, contentious legal process that is triggered when the Endangered Species Act takes hold."

The theory of such an approach, which has been backed by conservation groups, is that both conservation and business can be better served by negotiated settlements that plan the future of an entire ecosystem before any individual species are endangered.

There is more leeway for compromise under this view than when an area is severely degraded and options for protecting threatened species shrink.

Similar approaches have been tried with reasonable success. In one, the Nature Conservancy, an environmental group, has brokered a plan in the hill country outside Austin, Tex., to protect ecologically healthy areas while allowing development to proceed around them.

Ecology vs. Economy

Some destruction of habitat by developers is to be allowed, with the most important areas reserved for wildlife. In some cases, developers' land is purchased in a swap agreement that lets them build elsewhere in the county. The larger strategy is to accommodate both the ecology and the economy of the entire region.

Mr. Babbitt told Congress, however, that it ought to be possible to devise conservation plans that mainly affect public lands rather than private ones.

If ecosystems are to be the focus of Federal conservation policy, Mr. Babbitt said, a national scientific assessment of ecosystem health—a map, as it were, of the nation's biological diversity—is required to spot problems before they get out of hand.

As things stand now, the Secretary added, ecosystem studies are split between several Interior Department agencies.

Mr. Babbitt said he was considering the establishment of a National Biological Survey to map species and ecosystems with the same scientific accuracy as the United States Geological Survey charts the country's geology.

In any case, he said in the interview, "everyone agrees we're going to need to revisit the concepts of the Endangered Species Act" and determine "if we can't find some way to look at ecosystems on a multispecies basis and ask how it is we can take reasonable steps" to "deal with the economic tradeoffs" before a crisis erupts.

'Anticipating the Problem'

To avoid contention and lawsuits resulting from "repeated eleventh-hour listings" of species as endangered, Mr. Babbitt told the House panel yesterday, "we're going to have to manage the Endangered Species Act pro-actively, by anticipating the problem while we still have the flexibility to manage the problem."

He said in the interview that he believed this approach would uncover "a lot of unexplored possibilities" for conserving species while avoiding "economic collisions." If so, he added, it might be possible to avert what he called a series of "national train wrecks," like the conflict between loggers and environmentalists over preservation of the spotted owl in the Pacific Northwest.

Many conservationists consider the Endangered Species Act, which is up for reauthorization this year, to be the nation's single most powerful tool for preserving species. But many also say that despite the act, ecosystems have continued to decline and species are still becoming endangered. Opponents of the act charge that too often economic interests and property rights are threatened when protection measures are taken on behalf of an endangered species on a crash basis.

Nature Conservancy Plan

Although the act is up for reauthorization, Congress can simply extend it, as it has done with numerous laws. Mr. Babbitt said there was "a division of opinion" as to whether legislation reauthorizing the act should be undertaken this year or next.

He said he saw a "lot of merit" in a proposal by the Nature Conservancy that a national commission, sponsored by private foundations, examine the question and recommend what to do about the law by the end of this year.

The Bush Administration, in its closing weeks, settled a lawsuit with environmentalists by agreeing to add 400 more species, mainly plants, to its protected list in the next four years. This, coupled with the example of the spotted owl controversy and the requirement to declare still other species endangered, has imparted urgency to the reassessment of conservation policy.

"My most urgent task in my first month around here has been to try to assess how we're going to handle the generic issue of biodiversity," Mr. Babbitt said in the interview, "because we're not equipped to do it."

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Proposed Amendments to Endangered Species Act

Amendment A

The Endangered Species Act (ESA) shall be amended to provide that economic and social impacts will be considered equally with the best scientific evidence in determining whether a species shall be listed as threatened or endangered.

Amendment B

Purpose: The ESA will take no economic or social impact into account, either at the listing stage, or at the designation of a critical habitat for listed species.

The Endangered Species Act shall be amended to specifically remove any consideration of economic or social impact in determining critical habitat of a species that has been listed as threatened or endangered.

The ban on consideration of economics in the listing of any species as threatened or endangered shall remain in place.

Amendment C

The ESA will be amended to protect and manage entire ecosystems, rather than individual species. All efforts will be made to minimize the social and economic impact of the conservation of endangered and threatened species and their habitat.

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Old Growth Forests

Lesson 3

Objectives

- Students will identify a variety of viewpoints on the Northwest timber controversy.
- Students will advocate the position of one special interest group.
- Students will discuss the purpose of lobbying and then practice lobbying on behalf of their group's position.
- Students will examine the arguments for and against harvesting old growth forests.

Materials

Copies of handouts:

- Instructions—Special Interest Groups.
- Instructions—Congressional Committee.
- Instructions—Expert Witnesses.
- Role packet.

Name tag for each student.

Time Required

3 to 4 class periods.

Background Information: The wood products industry is one of the Pacific Northwest's largest private industries. Our old growth forests have, however, become a national issue, for which there is no easy solution. The goal of this lesson is for students to see and hopefully appreciate the wide range of viewpoints in the spotted owl/old growth forest controversy. The scientific, social, and economic arguments for and against harvesting the forest are given equal voice in the roleplay. In the end, it comes to the political arena, which is where the students are asked to find a solution.

The federal agencies that manage the public lands on which most of the remaining old growth forests lie are ultimately answerable to Congress. These agencies are the U.S. Forest Service (a branch of the U.S. Department of Agriculture), and the following branches of the Department of Interior: the Fish and Wildlife Service (which administers the Endangered Species Act), the Bureau of Land Management, the National Park Service, and the Bureau of Indian Affairs.

In Washington state, some old growth forests remain on lands owned by the state, and are managed by the Department of Natural Resources (DNR). Under the Washington State Constitution the DNR is required to manage the state timber lands to bring the highest amount of money into the state treasury. Some of that money is used for school construction.

Note: The views expressed by the various special interest groups in the roleplay packet are not actual quotes, except where noted, but do reflect the views of those groups, as expressed in newspaper articles and interviews. The "expert" witness roles and the loggers' statements are fictitious, but reflect accurate information.

Procedures

■ **Inform the class** that they will conduct a simulation of a Congressional joint select committee investigating the Northwest timber controversy and the preservation of old growth forests. Each student will play the role of either a member of a special interest group, a scientific expert or economist, or a politician. Either ask for volunteers or assign students the following roles:

Special Interest Groups (3 to 4 students each, except Weyerhaeuser)
- The Wilderness Society
- Earth First!
- The Sierra Club
- Washington Forest Action Committee
- Northwest Forest Resource Council
- The Save Forks for the Future Coalition
- Large Timber Company Representative George Weyerhaeuser, Weyerhaeuser Co

Expert Witnesses
- Fran Forester
- Gerry Ramirez
- Danny Smith
- Pat Wild
- Dr. Terry Thomas
- Jan Sakamoto

Congressional Committee (5 to 10 students)
- Representative Wood, from Washington State whose district includes the Olympic Peninsula, where logging and wood products are the major source of income.
- Representative Green, from Oregon, whose district includes Portland. This person is leaning toward protecting environmental interests.
- Senator Logan, from Oregon who strongly supports a ban on log exports.

Remaining members are undecided and are not necessarily from the Northwest. (They may use their own names or select a member of Congress.)

■ **There is a separate handout** of instructions for each group (special interest, Congress, and expert witnesses). Give a copy of the instructions to each special interest group member, to the Congressional committee members, and to each expert witness. Give a copy of the role packet to everyone.

■ **Tell students** that before the hearing, they will have an opportunity to lobby their representatives. Ask if anyone knows what you mean by "lobby."

Explain that lobbying is pressure by a group on legislators in an effort to have legislation passed that benefits that group. Ask who, for example, might try to influence a bill to control the sale of guns? Most students will know that the National Rifle Association is a very active lobbying group. Law enforcement groups might also become involved, plus citizens groups that favor gun control. Explain that many lobbyists work full-time and are very knowledgeable in the ways of Congress. They are often called upon to testify to legislative committees. They also often call upon their "grass roots" supporters back home to write and call their legislators. Another way lobbyists work is to encourage favorable publicity about their cause, such as newspaper stories, advertising and television appearances. [The activity later in the unit in which students create an advertisement for their special interest group is an example of an activity that a good lobbyist might encourage.]

■ Give students the rest of the class period to prepare their roles. You might want to give students an extra day to do additional research beyond the information provided in this curriculum. [A modified version of the extension activity "Writing and Presenting an Advertisement" could be done at this time so that students can use their ads at the hearing. It is found immediately following this lesson.]

During the preparation time, have committee members prepare questions for witnesses, have special interest group members individually learn their group's position on the issue, and have the scientists learn their roles. Before the lobbying activity, give the special interest groups at least 15 minutes to meet as a group to plan their lobbying strategy. Refer them to the handout "Instructions—Special Interest Groups." The Committee members should also meet at that time and elect a chairperson. Refer them to the handout "Instructions—Congressional Committee." Scientists and the economist should continue to study and prepare their roles. Encourage them to make graphs and charts to illustrate their testimony. Further preparation can be assigned as homework.

■ **The next class**, inform students that prior to the hearing, there will be a "reception," at which members of the special interest groups will have an opportunity to talk (i.e., lobby) with their representatives and senators. Everyone will have the opportunity to exchange views with and question the expert witnesses there to testify. To insure that everyone stays "on task" during the reception, tell them that after the reception, everyone will list those people they spoke to, and a brief description of what was said. All special interest groups should speak to at least three legislators.

■ **Give students** name tags identifying their roles. Have the members of the Congressional committee stand first, or wear hats, so that the lobbyists can easily identify them and find them during the reception.

■ **Announce that** the reception will last 20 minutes. During that time, members of the special interest groups should try to talk to as many politicians as possible (at least three). At the same time, the experts should circulate and give their input as appropriate, in response to questions from politicians and group members.

■ **After the reception**, convene the Congressional committee meeting. Set up the room with the committee in front, and those there to testify in the audience. (There probably won't be time to complete the hearing in this class period.)

■ **Ask the chairperson** to call the meeting to order. Allow 40 minutes for testimony. First, each special interest group will have 3 minutes to present their position, including questions from the panel. The groups may select one spokesperson, or all members may speak. The scientific experts will then have 3 minutes each to present their testimony, including answering any questions from the committee members. After hearing all of the testimony, the committee will conduct an open discussion, and decide what, if any, action they will take. The chairperson should call on each member of the committee and ask their position (total of 10 minutes). If any legislation is introduced by a group, have the committee vote on whether to take the proposal under consideration for further research. (Alternatively, the committee can meet privately for 10 minutes to deliberate. During this time, the rest of the class can write out what action they think the committee should take.) The Chairperson should announce the committee's decision.

■ **After the meeting**, debrief by asking the following questions:

- Did each special interest group manage to have its views heard? Were some more effective than others? What were the reasons for this?
- Were the experts persuasive? Did their views carry more weight with the Committee than the special interest groups? Why or why not?
- To the committee members: Was the lobbying exercise useful to you? Why or why not?
- To the lobbyists: How did it feel to try to influence someone's views?

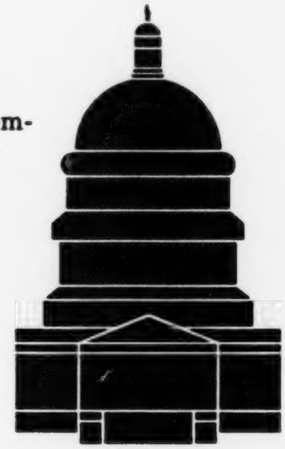
■ **As an alternative exercise**, the entire class could be divided into groups of 7 to 8 students, to mediate a solution to the problem. Each mediation group would consist of one member of each of the 6 special interest groups, and one or two mediators.

Extensions

Have students choose partners and write Poems for 2 Voices about the controversy. Instructions for this activity are found in Lesson 5 of the Salmon Summit.

Additional extension activities found at the end of this unit include: writing and presenting an advertisement; poetry (poems by Theodore Roethke and Charles Olsen); "talking mouth," a data organization strategy; creating a Book of Knowledge about old growth forests; creating data disks and sharing them with younger students (an opportunity for community service learning); and cartooning.

Instructions— Special Interest Groups



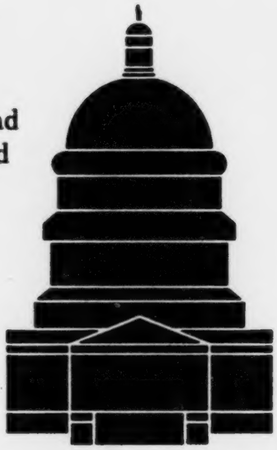
Your goal at the reception is to convince the Committee members that they should find a solution to the problem of how to manage old growth forests that will fit the goals of your group. In planning a strategy, decide whether you will target those politicians who are opposed to your view and try to change their minds, or spend time with those who seem to be undecided.

Determine your best arguments, identify the strengths and weaknesses of your position, and be prepared to respond to questions about your weak points. Keep your presentation brief and to the point. Review the positions of other groups, and point out the weaknesses of the other positions. Review the testimony of the scientific experts, and talk to those experts who you think can help your side. Avoid arguing or interrupting other conversations. Remember that this is a social occasion.

Finally, decide a strategy for the hearing. You may select a spokesperson for the entire group, or you may each testify. Remember, you only have 3 minutes to testify. You want to stress the strong points in your position, and be ready to respond to questions about some of the weaknesses in your position.

You may propose legislation that will benefit your group during your presentation. If so, have a copy for each committee member.

Instructions—Congressional Committee



Preparation for the reception: Review this information, and the Role Packet and prepare questions to ask the lobbyists and experts at the reception. Each politician should prepare at least two questions to ask the lobbyists during the reception.

As a member of the Congressional Committee, your job is to listen to the scientific experts, and the special interest groups, and come up with a solution that you feel is wise, both in terms of the laws protecting our environment, and in terms of the best interests of the people you represent, your constituents.

At the lobbying reception, listen to as many people as possible, and ask questions to make sure that you understand each group's position. Use the scientific experts as resources. Don't make any promises you can't keep.

Preparation for the hearing: First, elect a chairperson. The chairperson is responsible for seeing that each committeeperson's views are heard during committee meetings, for chairing the hearing and for announcing the committee's decision. During the hearing, the chairperson should make sure that speakers do not take more than their allotted time—3 minutes each including questions—and keep order.

For the hearing, the committee as a whole should prepare at least two questions for each person or group testifying. The chairperson will be responsible for assigning questions to the committee members so that each legislator asks questions of at least one witness. The question and answer period is included in the 3 minutes allotted for the presentation. Committee members may interrupt to ask questions during the 3-minute presentation, but should be courteous.

Instructions—Expert Witnesses

Your role is to be a resource of scientific and economic information for the committee members. You should study your role and know it thoroughly You may make charts or graphs to help illustrate your testimony. You may also do additional research if you wish. You should prepare a short (3-minute) presentation of information you think the committee should know about old growth forests and be prepared to answer questions.

The Wilderness Society

The Wilderness Society is a national conservation organization dedicated to the proper management and preservation of America's public lands. The Society wants to preserve the maximum amount possible of remaining old growth forests. The Society is also especially concerned that the remaining old growth be preserved in large tracts, sufficient to support wildlife such as the spotted owl. The Society does not support illegal tactics to save the forests, such as tree spiking.

We are asking this committee to set aside sufficient old growth in large tracts sufficient to preserve the northern spotted owl and the old growth ecosystem.

The northern spotted owl is an "indicator species". Because the owl takes so many acres of old growth to survive—as much as 5,000 acres of hunting range per pair of owls—any decline in its population is an early warning that the old-growth ecosystem is in trouble. For example, many years ago, canaries were used in coal mines to warn of poisonous air. When the canaries started to die, the miners knew it was time to get out. The spotted owl plays somewhat the same role for old growth forests. Unfortunately the owls are not doing too well, which triggers alarms for the ancient forest they inhabit.

We are not to the point where we know so much that we can decide which species can live or die. If the spotted owl can survive, as many as 100 other forest species will also be able to survive.

The ancient forests of the Pacific Northwest themselves are endangered. These are not just ordinary trees we are talking about. These are the last living remnants of the Middle Ages. They are world-class treasures. If we sacrificed them for jobs, it could be compared to blowing up medieval cathedrals—Chartres this week, Salisbury next week—to provide jobs. But in the end there'd be no more cathedrals and everyone would be out of work anyway.

The vast ancient forests that once blanketed the Pacific Northwest are rapidly being reduced to only patches of old growth, many of which are already too small to support plant and animal species dependent on the old growth ecosystem.

Once western Oregon and Washington contained 19 million acres of ancient forests. Logging has reduced this amount to only 2.3 million acres, just 12 percent of the original forest.

Washington Forest Action Committee

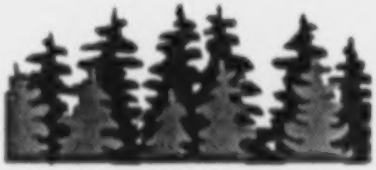
The Forest Action Committee is an organization of loggers and represents their interests. The members of this committee are all loggers themselves. The Committee wants to cut old growth trees in the national forests, as they have done for years.

We ask Congress to limit the amount of old growth trees protected from logging to a minimum. In fact, we think there is already sufficient old growth in national parks and wilderness areas. We're against banning log exports. We aren't interested in any government handouts, all we want is to continue our livelihood. Don't insult us with low interest loans. All we want is a timber supply.

We are the ones who will most be affected by this debate. We are angry, scared and most of all frustrated. We have long made a modest living from the commercial harvest of the trees in our national forests. Now we are being told that the public at large no longer wants us to cut these forests. We are tired of being the target of political battles and having to absorb 100% of the results of these battles.

The old growth forest may be a fragile ecosystem, but no more fragile than a small, isolated timber town.

Earth First!



Earth First! is a nonviolent, radical environmental group. Their tactics include sitting in trees and communal "tree hugging" to prevent the trees from being cut down, and some members advocate sabotage against developers and loggers, including the spiking of trees. (This practice involves the driving of spikes into trees in a forest about to be logged to stop loggers from sawing them down. Loggers have been injured when cutting down spiked trees.)

We want this committee to stop all cutting in old growth forests. When we spike trees, we are not trying to hurt loggers, but to make the timber industry have to spend money to find the spikes and remove them. And it gets the kind of headlines that brings wilderness questions out of the back rooms of private industry and government and brings them up for discussion in the light of day.

Our democracy has always moved forward by people willing to break bad laws. It's as American as apple pie. We look back 25 years now, and we can't believe there was a time when black people couldn't go into a restaurant. No one asks about the ethics of breaking segregation laws now. But at the time, that was all you heard, about those black people breaking the law.

In 25 years, people will look back and say, You mean they were cutting down the forests that keep us alive? Thank God there were people who stood up for their convictions and stopped it!

We see the Sierra Club and the Wilderness Society as "couch potato" environmentalists. All they do is sit around and write letters.

Northwest Forest Resource Council

The Council is a coalition of ten forest products industry associations in the Pacific Northwest. Members of the associations are timber companies based in cities, towns and communities in Oregon and Washington that depend on a strong and vital forest products industry for their economic survival.

We ask the committee to find there are already sufficient old growth stands set aside, and to limit any new set-asides to a minimum. Allow us to continue cutting old growth in our national forests until sufficient reforested timber is ready for cutting.

The old growth forests of the Pacific Northwest are a valuable resource. They are the mainstay of the region's forest products industry that employs some 140,000 families and wage-earning people. It is an important ecological and recreational resource as well. Most important, it is a resource found in relative abundance in this region.

According to data compiled by government agencies responsible for managing Northwest forests, there are over 7.5 million acres of virgin old growth timber on the federal lands in Washington and Oregon. Little known is the fact that some 4.2 million acres (58%) of these native forests have already been preserved, never to be managed for multiple uses by man. This is an area equal in size to a swath of land two miles wide extending from Portland, Oregon to Washington, D.C. preserved forever. There will always be old growth forests in the Pacific Northwest.

Less than half the national forests in the Northwest are available for timber production purposes. Old growth timber on these lands is scheduled to be harvested over the next 50 years. As it is harvested, new trees will be planted so that over time a managed forest capable of providing a sustained yield of forest products will result.

Sierra Club

The Sierra Club, founded in 1892, is the oldest national organization dedicated to protecting natural resources and the environment. The Sierra Club wants to preserve the maximum amount possible of old growth forests and is giving this issue its highest priority. The Sierra Club does not support the use of illegal tactics, such as those used by Earth First!

We support a ban on log exports as a short term solution to get logs to hungry local mills. We also support aid to logging-dependent communities to help them diversify. Whether the spotted owl or environmentalists existed, many people are going to be out of work in any event. We're convinced that, at the present rate of logging, the ancient forests will be gone in 20 years.

Giant timber companies are advancing on our national forests with bulldozers, saws and axes, wantonly felling trees as never before. They're deforesting the U.S. at the fastest pace in history. And the U.S. Forest Service is helping them! We think the Forest Service needs to rethink its policies.

The Forest Service is the government agency charged with protecting public forest lands and managing logging on those lands. It is responsible for preserving the biological diversity, wildlife habitat and precious watersheds of our national forests. The Forest Service supports the agenda of the timber industry 99% of the time.

We have been managing our national forests as though they were outdoor warehouses of living trees, held in inventory until the lumber companies are ready to take delivery. Many of these trees are being shipped to Japan, while sawmill workers in the Pacific Northwest are losing jobs.

The Save Forks for the Future Coalition

This is a group of citizens, including loggers, sawmill owners and operators, and truckers whose jobs depend on the timber industry. The views represented within this group include:

- **Jackie Ray**, owner of Forks Lumber Supply. Jackie is wearing a hat that says either: "SAVE A LOGGER, KILL AN OWL" or "I love spotted owls ... barbecued, fricasseed, baked, stir-fried." "These environmentalists from the city have no idea what the timber industry is all about. You're talking about billions of dollars of lost revenue, thousands of lives destroyed for a potential, a maybe, net gain of several hundred spotted owls. When it is your life being destroyed, that's pretty hard to understand. If these people don't want logging, they should stop using wood products."
- **Sal Simpson**, owner of Forks Logging Company. "I employed over 200 people a year ago. I've now had to cut my crew to 125, due to the cut-back in the harvest of old growth timber in national forests. These are people with families to feed and mortgages to pay. They have been making $12 to $20/hr. These are not the kind of people who are going to accept welfare or unemployment. They are proud, independent people who want to work in their chosen profession, not be retrained for other jobs."
- **Tom Mills**, owner of the Mills Brothers Sawmill. "These log exports are killing us. My saws are set up to cut the large, old-growth logs we bought from the national forests out here on the Olympic Peninsula. I used to employ 40 people and do millions of dollars in sales. Now, I have 6 employees, and am hard pressed to pay them. If I can't buy logs, I'm going to have to close up shop soon. I support a ban on all log exports. It just doesn't make sense to send raw logs overseas to be milled when we can do it right here in Forks for less, and employ local people as well."
- **Gary Thomas**, former logger, now correctional officer. "My grandfather and father were loggers, and I cut logs for 20 years, until last year, when I entered the training program at the local corrections center. There's just no future in logging. I'm making less, but at least I know there will always be inmates. Forks needs to look for other industry, such as recreation and tourism. I support more aid to logging communities so that they can diversify."

George Weyerhaeuser, Chief Executive Officer, Weyerhaeuser Co.

Weyerhaeuser is a large timber company that owns vast tracts of timber and many mills. Weyerhaeuser currently exports much of its timber overseas.

"We strongly oppose a ban on log exports.

"There is a public misconception that we are running out of trees. In fact, there are more trees growing in the United States now than there were in 1920. Just last year, Washington's forestland owners planted over 40 million trees. At Weyerhaeuser, we harvest no more than 2 percent of our 1.6 million acres of Washington timber lands in any one year. We replant four to five seedlings for every tree we harvest. Washington law requires that forests be replanted within three years after logging.

"Congress and the public need to understand that there are two timber economies in Washington. The first is represented by people like those here today, from the Save Forks Coalition, and the Forest Action Committee. They depend on trees from public lands for their livelihoods, and are being hit hard by federal set-asides for wilderness and environmental regulation.

"The second is nearly twice the size of the first, and consists of thousands of small, private tree farmers, individual owners [such as Weyerhaeuser], and mills that are geared to grow and process second-growth timber. This group is in no danger of running out of raw materials, because we've been renewing it for decades. Our mills rely almost entirely on the second-growth logs grown on our own lands.

"Both young and old-growth forests have their advantages, and problems. Realistically, society needs both. Old growth clearly has special beauty and ecological value; young forests have unique economic and ecological value.

"We'll keep growing new, young-growth timber as long as companies like Weyerhaeuser can continue to invest in their forests with the confidence that they will have markets in which to sell their products when they mature. And, because domestic demand rises and falls dramatically over time, this means BOTH domestic AND foreign markets."

—Excerpted from Weyerhaeuser's letter to the editor, *The Seattle Times*, May 20, 1990.

Fran Forester
Forestry Researcher
University of Washington

The old growth forest of the Pacific Northwest is a unique ecosystem containing a diverse mix of trees, including the Douglas fir, western red cedar, western hemlock, and silver fir. I consider an old growth forest to be one containing trees at least 175 to 200 years old. (Some Douglas firs grow to be over 1000 years old).

True old growth forests are characterized by large, old living trees; a multi-layered canopy; large standing dead trees, called snags; and large dead trees on the ground and in streams. The dead trees are essential to the health of the forest, and are the basis of its productivity. The nutrients that the forest needs are not mainly in the soil but in the living and dead plant material itself. As leaves and branches fall, and as trees and plants die and decay, this material is recycled to the living forest. The forest literally feeds itself, wasting nothing.

The trees in a Pacific old growth rain forest support the greatest mass of living things (known as biomass) of any ecosystem on the planet. Where a tropical rain forest may contain 185 tons of plants per acre, a Pacific forest will contain 400 tons an acre. Some redwood forests contain as much as 1,800 tons an acre.

Gerry Ramirez, Forester

Forests, like human beings, have a natural life span. Once they reach maturity, at about 200 years, growth slows down, and most of their energy goes into sustaining themselves. Eventually, though it may take several centuries more, decay sets in, and the trees die and fall down.

While many professional foresters believe that these mature trees should be cut down and replaced with new, growing trees, my research has shown that the phase we call "post-mature" or old growth forest is the richest, most complex phase of the forest's life. While old growth trees may be past their wood-producing prime, they are valuable for many other functions. Crooked trunks, broken tops and other marks of age provide food and shelter for many different types of animals. For example, thick bark is home to many insects, which are food for foraging birds such as the woodpecker and nuthatch.

Fallen logs, called "down woody material," are a reservoir for moisture. In dry weather, even after a fire, the high moisture content of fallen trees encourages fungi to grow. These fungi play an important role in helping tree seedlings to grow out of the downed trees, which are called "nurselogs." Also, as wood decays, concentrations of nitrogen, phosphorous, and other important nutrients build up in the rotting log. These nutrients are released very slowly back into the soil to be used by future generations of trees and other plants.

Fallen logs also help prevent erosion. In streams, they provide nutrients, help stabilize stream banks, and slow water flow by creating pools and waterfalls.

The traditional replanting of forests that contained many species with only one species of trees results in a monoculture. This simplified forest lacks all of the elements of the old growth ecosystem. The removal of ecological diversity and complexity affects the forest's ability to adapt to stress and change.

Danny Smith
Ecologist, City Watershed

While younger forests depend on natural rainfall, old growth forests can "make their own rain." The canopy (the multi-layered system of branches that shade the old growth forest and rise high above the forest floor) can condense water out of moist air, fog, and clouds, in some instances adding up to 35 inches to the annual rainfall. A single old growth tree may have sixty to seventy million needles, and a total of 43 thousand square feet of leaf surface. These needles are amazingly efficient at collecting moisture and nutrients from the atmosphere. For example, when forests were cut from around a watershed area in Oregon, scientists expected the water supply would increase in the reservoir. Instead, the supply dropped. It was found that almost a third of the water in the reservoir had never come from rain. Rather, the tall trees collect it from passing clouds and fog banks. When the trees were cut down, the moisture blew by without depositing the water.

Old growth trees also protect soil and wildlife from the extremes of weather. The dense canopy breaks up the impact of falling rain and snow, preventing erosion, landslides and floods. In the spring, when the snow melts, the cover of the dense forest slows down the snow-melt. For example, snow might remain in an old growth forest one or two months longer than in a clear cut area. This allows water to slowly fill reservoirs, rather than flood them at the first thaw, with much of the water being lost.

Pat Wild, Research Wildlife Biologist

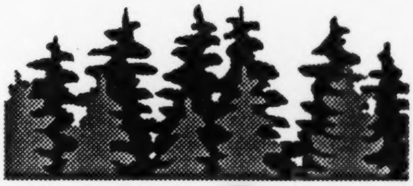
Old growth forests provide the basis for a complex web of life that extends beyond our current understanding. The key to the old growth forest is its diversity, both in terms of the plant and animal species found. The canopy of an old growth forest ranges hundreds of feet above the forest floor and contains many layers. Each layer provides nesting and feeding sites for birds and small mammals. More than 1500 species of insects and other invertebrates may spend all or part of their life cycles in the canopy of an old growth Douglas fir forest. The red tree vole, for example, nests in the old growth trees, licks the moisture off the needles for water, and eats the needles for food, never needing to leave the forest canopy. New species continue to be identified.

Both fallen and standing dead trees in the old growth forest are extremely important in the old-growth forest ecosystem. A tree killed by fire, lightning, insects, or disease may remain standing for 200 years or more. Called "snags," they are colonized by many types of insects, birds, and mammals. The most valuable part of the snags is the cavities that develop in their branches and trunks. At least 45 vertebrate species, from the northern flying squirrel to the northern spotted owl nest or feed only in the cavities of old-growth trees. These animals eat the mosses, lichens, and insects that invade dead or dying trees, and they in turn are eaten by animals higher up the food chain—animals like black bears, pine martens, and bobcats, all of which take shelter in snags. Eagles, owls and hawks use the branches of a snag as lookout posts when they hunt for food. At least 39 bird species and 24 mammal species use snags for courtship, nesting, food, and other activities. Some animals hide nuts and seeds in the snag, saving them for later meals. Others may store dead prey in the snag's cavities. Still others will use the holes created by woodpeckers for homes.

The forest ecosystem is incredibly interdependent. When one species, such as the spotted owl, goes extinct, quite likely many other species go with it.

Maintaining this biological diversity is important for these reasons: 1) it will protect the forest from destruction, should disease or insect infestations strike a single species; 2) it allows greater flexibility to environmental changes, such as extreme cold, fire, or pollution; and 3) it creates a natural environment that includes interactions among species, setting the stage for future evolution.

Dr. Terry Thomas
Forest Ecologist

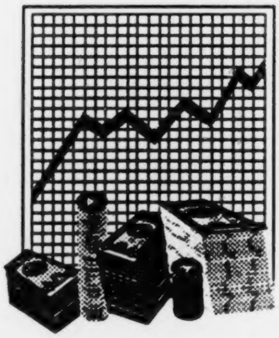


I think we need to move toward management of the entire ecosystem, not just the trees. There's a lot more than trees in these forests.

Forests can still be logged and not destroyed if we just change our logging practices. I advocate the "new forestry," what I like to call a "kinder and gentler forestry." This means the growing of diverse forests, not just one species of tree. This means that clear-cutting would no longer be allowed. Mature trees would be left after an area is harvested, along with snags. Some downed logs and other debris would be allowed to remain on the ground. This would result in man-made clearings much like those left by wind and fire. The remaining debris would allow the forest to renew itself, from the rotting logs, organic litter, spores of mycorrhizal fungi, and areas of undisturbed soil.

This would cost more. Some also say that remaining trees would be subject to high winds, and might fall down, injuring loggers and foresters. But it's our best shot to both continue to log and create diverse forests.

Jan Sakamoto
Economist



Regardless of what we do about the northern spotted owl, the wood products industry in the Pacific Northwest is in decline. In 1978 about 160,000 people were employed in the industry in both Washington and Oregon. That number had decreased to 117,000 by 1992. Today more of the country's wood comes from the southeastern states. Also technology has made it possible for engineered lumber baked in microwave ovens to replace the huge beams once taken from Northwest old growth forests.

We've been predicting a loss of jobs for decades, since the old growth can't last forever, with or without the owl. I would estimate that about 2/3 of the job losses happening in the 1990s are due to mechanization in the industry, the recession, overcutting in some areas, and Forest Service cutbacks adopted—all unrelated to the fight about the spotted owl. The number of jobs lost could be somewhere between 12,000 to 32,000, depending on who you talk to. One report shows that since 1990, 132 sawmills have closed in the Pacific Northwest, leaving almost 13,000 people out of work.

There are lots of timber-related jobs out of work loggers could do, if the government can come up with the money to pay them. Stands of timber need thinning and pruning. Stream banks and trails need repairing. It may be better to pay workers to do this type of work than pay unemployment or welfare. Also, more timber could be turned into more valuable finished products, thus creating more jobs.

As my colleague Ed Whitelaw, at the University of Oregon has pointed out, the Pacific Northwest has gained 700,000 jobs in recent years even though the timber industry has been in a slump. Many of those new jobs were attracted by our region's natural beauty, a part of which is our forests.

Extension—Writing and Presenting an Advertisement

Sequence

This activity can be used after the students have completed the congressional hearing on the old growth forest controversy. You might also use an abbreviated version of this activity prior to the hearing in Lesson 3, and let each special interest group make a poster to use at the hearing.

Objectives

- Students will see how the points of view about the spotted owl controversy are expressed in advertising/public relations materials.
- Students will observe how advertising/public relations material is written for a specific purpose and for specific readers.
- Students will identify specific features of writing that make advertising effective communication.
- Students will write an advertisement with a specific point of view.
- Students will practice making an oral presentation.

Materials

Copies of handouts:

- Advertisements
- WFP Assignment
- FOF Assignment
- Board's Criteria
- Option: T-shirt for WFP
- Option: T-shirt for FOF

Time Required

3 class periods (four periods if the t-shirt option is used).

Procedures

[This activity was developed by Anne Enquist, adjunct law professor, University of Puget Sound School of Law, for the UPSICEL curriculum *LRE: Linking Language Arts and Social Studies.*]

■ **Day one**: Distribute sample ads. Note that the "Two Billion Trees" Ad and the "Clearcuts are Ugly" Ad are two-page ads and the parts should be considered together. Have the students examine the one and two-page ads (some of which will be from timber companies and others from environmental groups.) Discuss who the ad is written for and what is the purpose or goal of the ad. Through a discussion led by the teacher, the students will examine what makes the ad effective or ineffective communication. For example, what about the ad grabs the reader's interest? Is there a catchy phrase or slogan? What content did the ad writer select and why? Discussion should include examination of paragraph structure, sentence structure, word choice, and rhetorical strategies such as repetition, alliteration, analogy, etc.

■ **Once the students** have discussed the ads, tell them that they are now going to act like advertising writers and, like most real advertising writers, they will be part of an advertising agency.

■ **At this point**, divide the class into groups of 3 to 4 students each. Each group is a separate ad agency. Half of the groups should receive the assignment to design an ad for WFP and half of the groups should receive the assignment to design an ad for FOF.

■ **Day two**: Students will work in their small groups and write their ads. Encourage students to consider using music to accompany their ad. Play music while they are working. (Depending on the class's ability, the teacher may allow two days for writing the ad.)

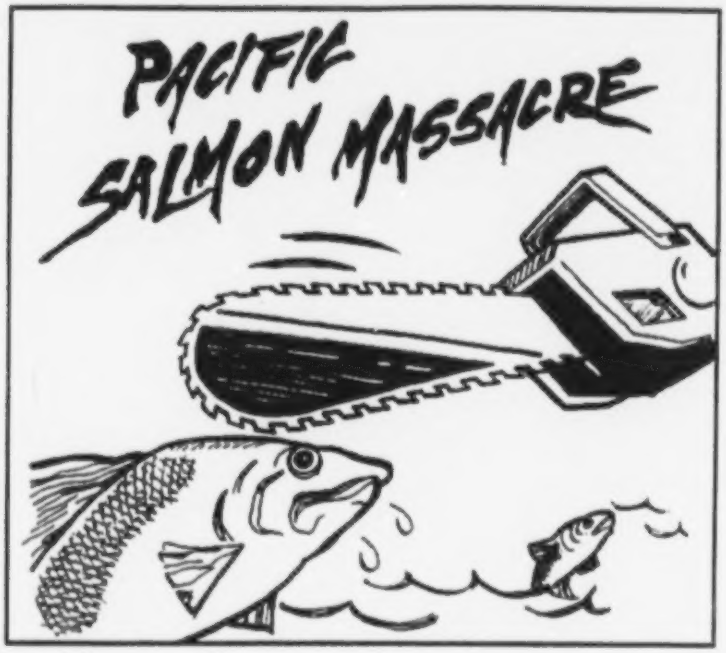
■ **"Chris Peters,"** a WFP (or FOF) representative played by the teacher, should visit each group and answer questions the group may have about WFP (or FOF). The teacher should stay in role in these visits. During these visits to the groups, resist any attempts by groups to force you back into your teacher role.

■ **Day three**: Each group presents its ad to the "Board of Directors." The Board of Directors should be played by students from groups writing the other ad. In other words, WFP ad writers roleplay the FOF Board of Directors, and FOF ad writers roleplay the WFP Board of Directors. Presentations should be limited to 5 minutes.

■ **After all presentations** to one Board have been made, that Board should meet and decide which ad design it will use. It should summarize its reasons and explain what it found were the strengths and weaknesses of each ad design. Meetings to decide and summaries of strengths and weaknesses should be limited to 10 minutes total.

■ **Day four**, T-shirt Option: Have students return to their groups as ad agencies. Distribute t-shirt assignment handouts. Tell the group that they have limited time, approximately 20 minutes, in which to create their t-shirt designs.

■ **Once the designs** are ready, if possible, have an advertising writer come in and look at the designs. He or she should tell the students what is and what is not effective about the designs they created. Ideally, the advertising writer should have already seen the best ads that were designed by the groups so that he or she can comment on them as well. If an advertising writer is not available, the students themselves can review the t-shirts designs and participate in a teacher-led discussion about what is and what is not effective about each of the designs.



Timber companies are cutting America's salmon harvest to shreds. Overlogging and related road building in America's ancient forests are contributing to the destruction of fish habitat in the eastern and western parts of Oregon and Washington. The damage now threatens the $1 billion Northwest fishing industry and its 60,000 jobs.

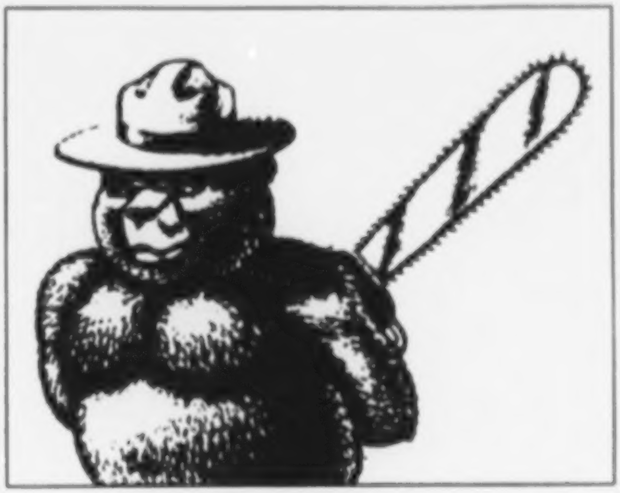
In eastern Oregon, eastern Washington and Idaho alone 76 types of salmon fishes are now at risk of extinction, according to the American Fisheries Society. Unless we act soon to protect the most significant habitat — the streams that flow through the last 10% of America's ancient forests — more fish and fishing jobs will disappear.

Most politicians say they want to save salmon. But some won't protect the streams in the ancient forests where many fish spawn, particularly those in eastern Oregon and eastern Washington. That's like using a bandaid to stop a severe hemorrhage—it won't work. It's time to protect fish and fishing jobs by preserving and restoring America's ancient forests.

Preserve Fishing Jobs By Protecting Ancient Forests

Ancient Forests Are America's Heritage

Paid for by Americans for the Ancient Forests and The Pacific Rivers Council



Bear Facts About Smokey and the Law

Some bad habits are hard to break. Years of mismanagement and illegal activities by our federal government have destroyed 90% of the rare ancient forests, and now some Northwest politicians and the timber industry want to suspend the very laws protecting the last 10%.

They've tried this ploy before — letting the government ignore current environmental laws when it sells rights to cut down America's ancient forests. Now they want to put government agencies above the law again, let the big timber companies cut down the last 10% of our ancient forests and take away our rights to stop them.

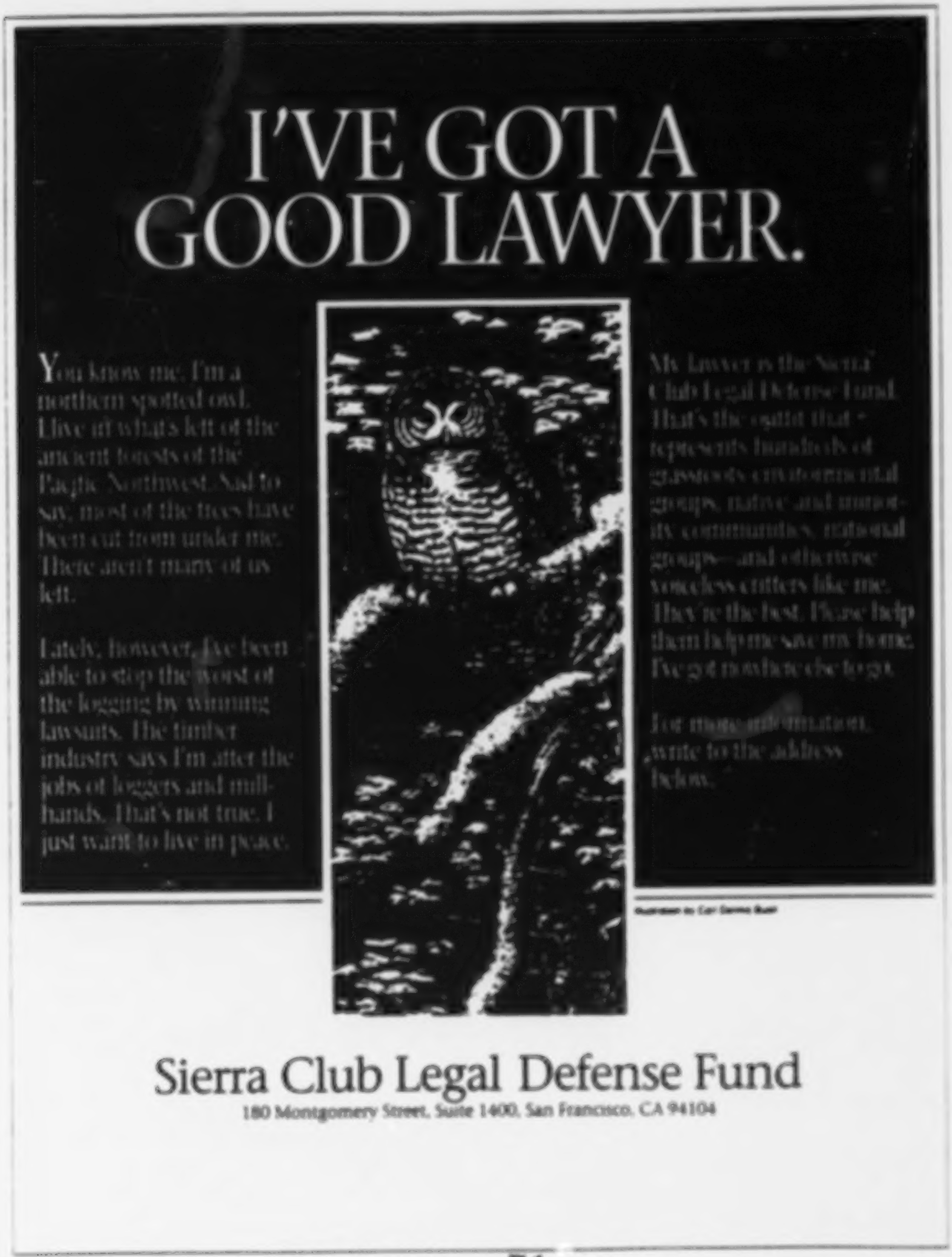
This time the politicians and the timber industry are also trying to disguise their plan, calling it names like "certainty" and "sufficiency." But it's nothing more than the same old "logging at any price" policy that has leveled the ancient forests, damaged fisheries and threatened 60,000 Northwest fishing jobs.

It's time for the government to obey the laws just like the rest of us. It's time for a change.

Breaking the Law is the Problem, Not the Solution.

Ancient Forests Are America's Heritage

Paid for by Americans for the Ancient Forests



I'VE GOT A GOOD LAWYER.

You know me. I'm a northern spotted owl. I live in what's left of the ancient forests of the Pacific Northwest. Sad to say, most of the trees have been cut from under me. There aren't many of us left.

Lately, however, I've been able to stop the worst of the logging by winning lawsuits. The timber industry says I'm after the jobs of loggers and millhands. That's not true. I just want to live in peace.

My lawyer is the Sierra Club Legal Defense Fund. That's the outfit that represents hundreds of grassroots environmental groups, native and minority communities, national groups—and otherwise voiceless critters like me. They're the best. Please help them help me save my home. I've got nowhere else to go.

For more information, write to the address below.

[illegible]

Sierra Club Legal Defense Fund

180 Montgomery Street, Suite 1400, San Francisco, CA 94104

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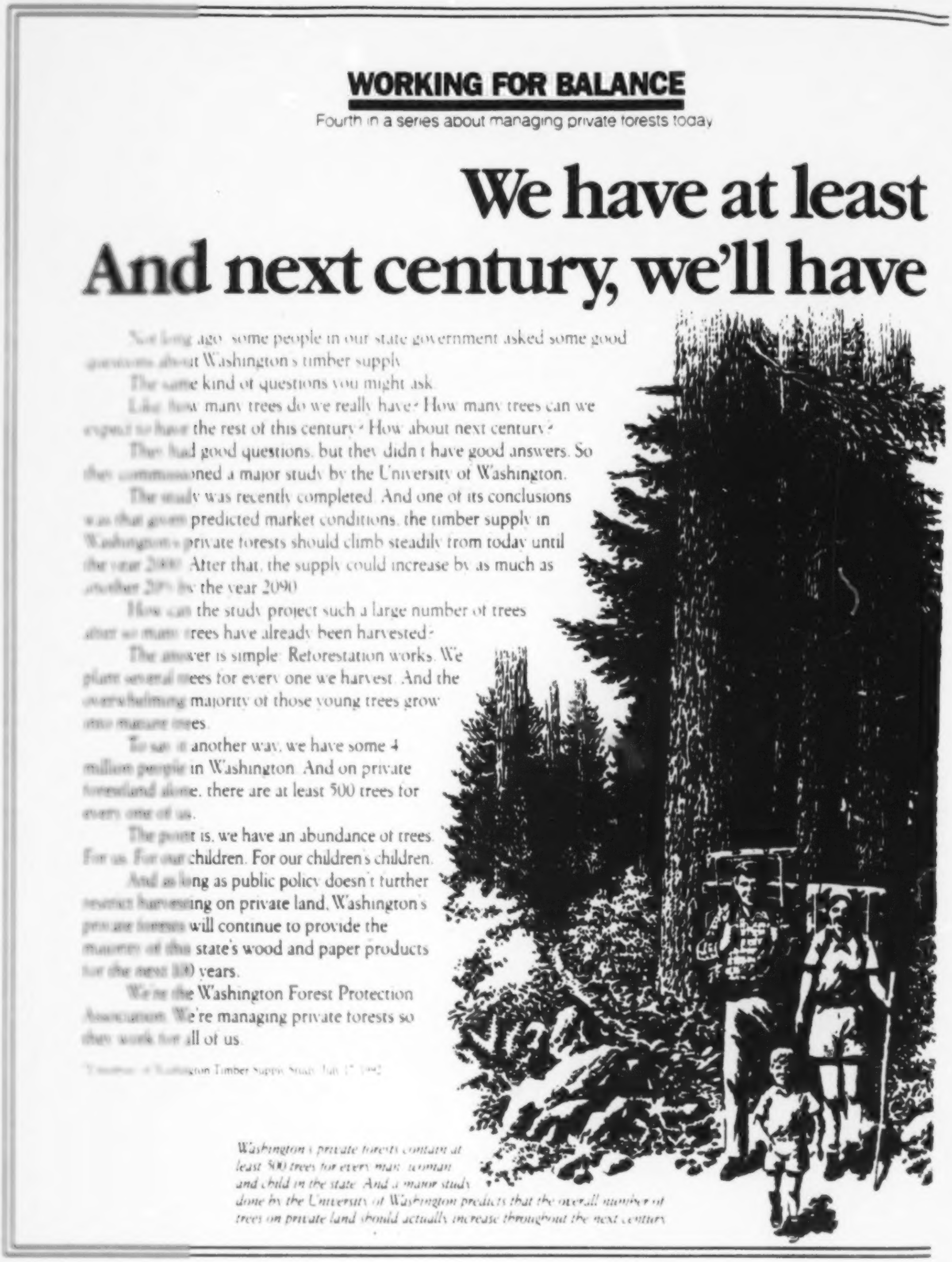

WORKING FOR BALANCE

Fourth in a series about managing private forests today

We have at least
And next century, we'll have

Not long ago, some people in our state government asked some good questions about Washington's timber supply.

The same kind of questions you might ask.

Like: how many trees do we really have? How many trees can we expect to have the rest of this century? How about next century?

They had good questions, but they didn't have good answers. So they commissioned a major study by the University of Washington.

The study was recently completed. And one of its conclusions was that given predicted market conditions, the timber supply in Washington's private forests should climb steadily from today until the year 2000. After that, the supply could increase by as much as another 20% by the year 2090.

How can the study project such a large number of trees after so many trees have already been harvested?

The answer is simple: Reforestation works. We plant several trees for every one we harvest. And the overwhelming majority of those young trees grow into mature trees.

To say it another way, we have some 4 million people in Washington. And on private forestland alone, there are at least 500 trees for every one of us.

The point is, we have an abundance of trees. For us. For our children. For our children's children.

And as long as public policy doesn't further restrict harvesting on private land, Washington's private forests will continue to provide the majority of this state's wood and paper products for the next 100 years.

We're the Washington Forest Protection Association. We're managing private forests so they work for all of us.

*University of Washington Timber Supply Study, July 17, 1992

Washington's private forests contain at least 500 trees for every man, woman and child in the state. And a major study done by the University of Washington predicts that the overall number of trees on private land should actually increase throughout the next century.

[illegible] Created by Cole & Weber, Inc.

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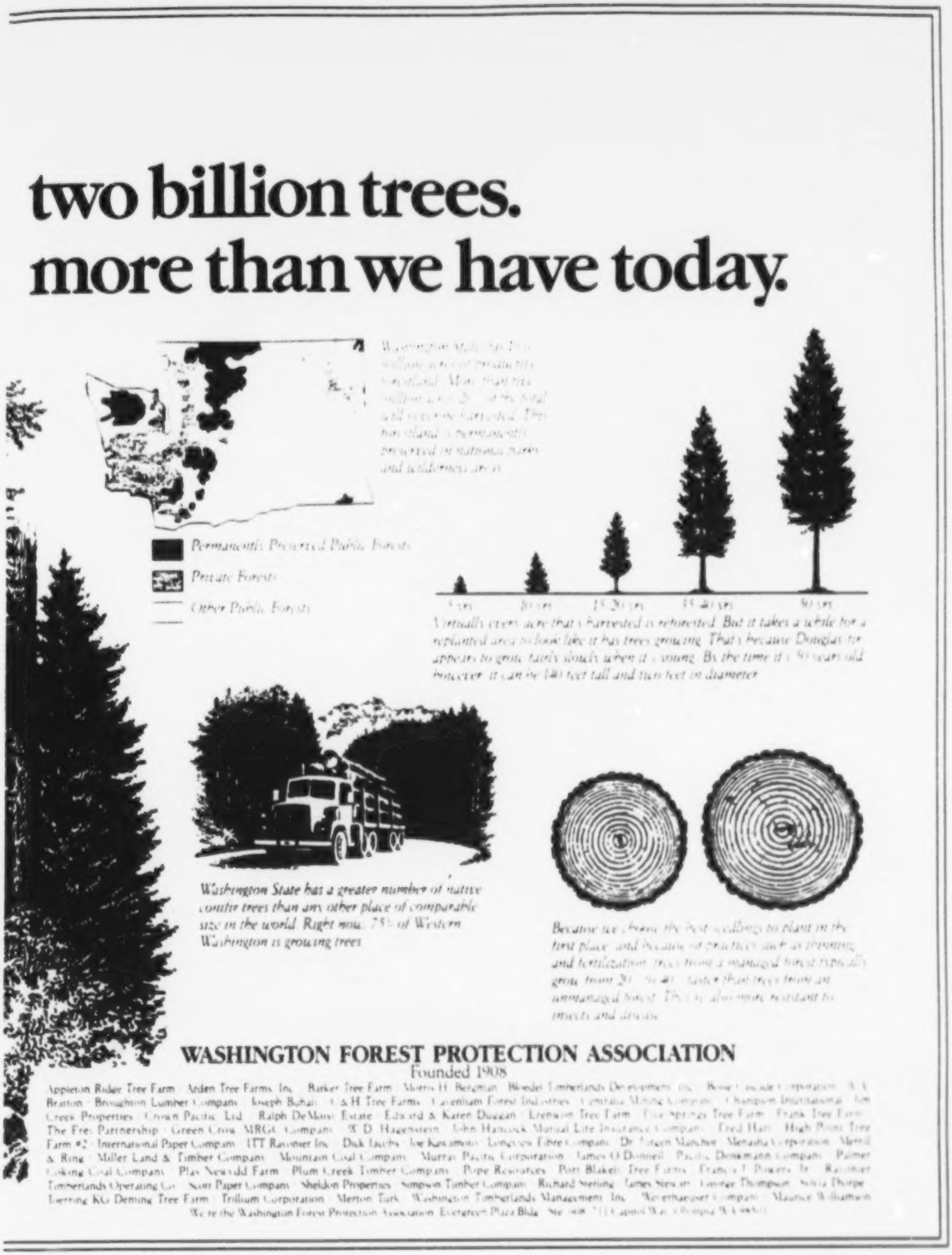

Virtually every acre that's harvested is reforested. But it takes a while for a replanted area to look like it has trees growing. That's because Douglas fir appears to grow fairly slowly when it's young. By the time it's 50 years old, however, it can be 140 feet tall and two feet in diameter.

Washington State has a greater number of native conifer trees than any other place of comparable size in the world. Right now, 75% of Western Washington is growing trees.

Because we choose the best seedlings to plant in the first place, and because of practices such as thinning and fertilization, trees from a managed forest typically grow from 20-[illegible] faster than trees from an unmanaged forest. They're also more resistant to insects and disease.

WASHINGTON FOREST PROTECTION ASSOCIATION

Founded 1908

Appleton Ridge Tree Farm · Arden Tree Farms, Inc. · Barker Tree Farm · Morris H. Bergman · Bloedel Timberlands Development, Inc. · Boise Cascade Corporation · A. A. Bratton · Broughton Lumber Company · Joseph Buhain · C & H Tree Farms · Cavenham Forest Industries · Centralia Mining Company · Champion International · Jim Creek Properties · Crown Pacific Ltd. · Ralph DeMoisy Estate · Edward & Karen Duggan · Erenwein Tree Farm · Five Springs Tree Farm · Frank Tree Farm · The Frey Partnership · Green Crow · MRGC Company · W. D. Hagenstein · John Hancock Mutual Life Insurance Company · Fred Hart · High Point Tree Farm #2 · International Paper Company · ITT Rayonier Inc. · Dick Jacobs · Joe Kawamoto · Longview Fibre Company · Dr. Eugen Manchot · Menasha Corporation · Merrill & Ring · Miller Land & Timber Company · Mountain Coal Company · Murray Pacific Corporation · James O'Donnell · Pacific Denkmann Company · Palmer Coking Coal Company · Plas Newydd Farm · Plum Creek Timber Company · Pope Resources · Port Blakely Tree Farms · Francis I. Powers, Jr. · Rayonier Timberlands Operating Co. · Scott Paper Company · Sheldon Properties · Simpson Timber Company · Richard Sterling · James Stewart · George Thompson · Sylvia Thorpe · Toerring KG Deming Tree Farm · Trillium Corporation · Merton Turk · Washington Timberlands Management, Inc. · Weyerhaeuser Company · Maurice Williamson

We're the Washington Forest Protection Association. Evergreen Plaza Bldg. Ste. [illegible] 711 Capitol Way, Olympia, WA [illegible]

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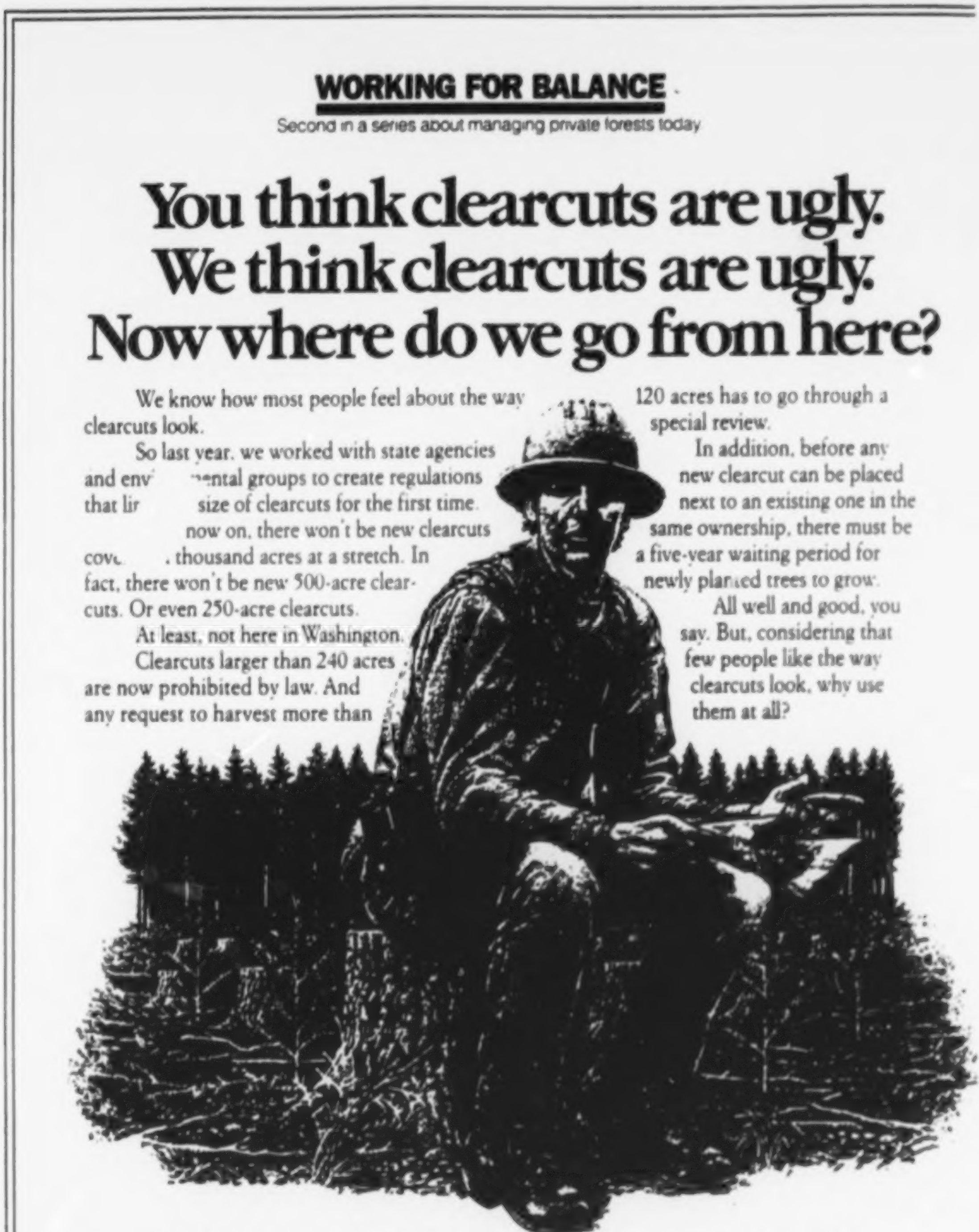


WORKING FOR BALANCE

Second in a series about managing private forests today

You think clearcuts are ugly. We think clearcuts are ugly. Now where do we go from here?

We know how most people feel about the way clearcuts look.

So last year, we worked with state agencies and env ental groups to create regulations that li size of clearcuts for the first time. now on, there won't be new clearcuts cov thousand acres at a stretch. In fact, there won't be new 500-acre clearcuts. Or even 250-acre clearcuts.

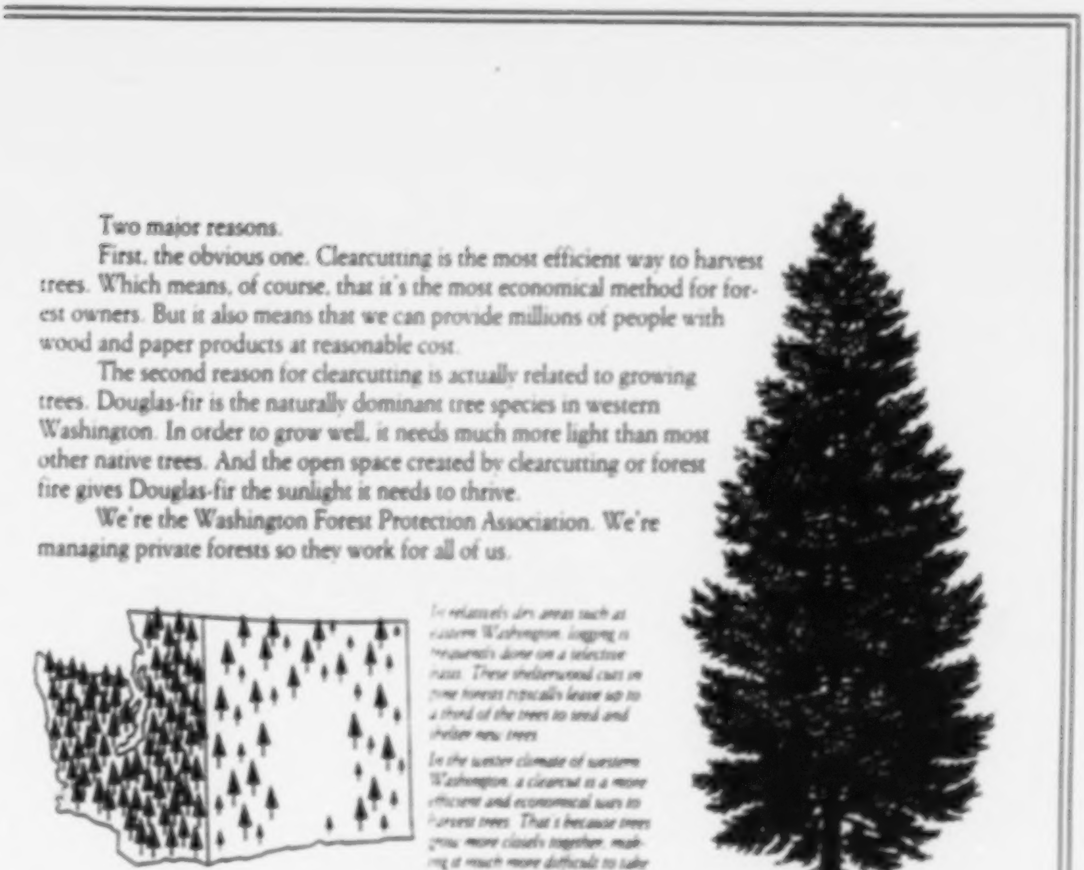
At least, not here in Washington.

Clearcuts larger than 240 acres are now prohibited by law. And any request to harvest more than 120 acres has to go through a special review.

In addition, before any new clearcut can be placed next to an existing one in the same ownership, there must be a five-year waiting period for newly planted trees to grow.

All well and good, you say. But, considering that few people like the way clearcuts look, why use them at all?

Nobody likes the look of clearcuts. But Douglas-fir, the naturally dominant tree species in western Washington, is a shade-intolerant species. So the open space created by a clearcut is the best way to ensure that young Douglas-fir trees grow well.



Two major reasons.

First, the obvious one. Clearcutting is the most efficient way to harvest trees. Which means, of course, that it's the most economical method for forest owners. But it also means that we can provide millions of people with wood and paper products at reasonable cost.

The second reason for clearcutting is actually related to growing trees. Douglas-fir is the naturally dominant tree species in western Washington. In order to grow well, it needs much more light than most other native trees. And the open space created by clearcutting or forest fire gives Douglas-fir the sunlight it needs to thrive.

We're the Washington Forest Protection Association. We're managing private forests so they work for all of us.

In relatively dry areas such as eastern Washington, logging is frequently done on a selective basis. These shelterwood cuts on pine forests typically leave up to a third of the trees to seed and shelter new trees.

In the wetter climate of western Washington, a clearcut is a more efficient and economical way to harvest trees. That's because trees grow more closely together, making it much more difficult to take individual trees out of a stand.

Under the new forest practice rules, watersheds throughout the state will be studied for the effects of clearcuts on erosion and siltation of streams. Clearcutting and road building will be limited wherever risks are high.

Douglas-fir is a highly desirable building material. It can be used in a number of different ways. And it's strong, lightweight and relatively inexpensive. Right now, [illegible] of western Washington is forested, and about half of the forests are stands of Douglas-fir.

WASHINGTON FOREST PROTECTION ASSOCIATION
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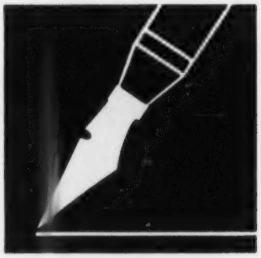
Design an Ad for WFP



You are the writing staff for an advertising agency. You have been recently hired to do a promotional campaign for a new client, a regional timber company called Western Forest Products (WFP).

WFP believes it is a community-minded corporation that has brought jobs and economic growth to your area. It feels that its good name has been hurt by radical environmentalists who wish to stop timber harvesting in old growth forests in order to save the spotted owl.

WFP wants to develop an ad campaign that will help repair its tarnished reputation and will persuade people that responsible timber harvesting, even in old growth forests, is a good thing.

Design a one-page ad that will capture readers' attention, convey a positive image for WFP, and promote WFP's position on the spotted owl controversy.

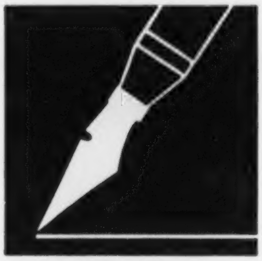
In your design, you may either draw or describe any art work or photograph that would appear in the ad, but be sure that you write out exactly the words that would appear in the ad. You could also cut and paste materials. Show how the art/photo and words should be laid out on the page.

If you have questions about WFP or this project, you can ask their representative, Chris Peters, when Peters is here for a meeting with our president.

Oh, by the way, several other advertising agencies are competing against us for this account. As you know, we need the business, so do your best.

We will be presenting our ad design to the Board of Directors of WFP on __________________. Select a spokesperson for your group who will present your ad to the Board. As a group, decide what your spokesperson should say about the ad's design and why WFP should pick it.

Design an Ad for FOF



You are the writing staff for an advertising agency. You have been recently hired to do a promotional campaign for a new client, Friends of the Forest (FOF), which is an environmental group that opposes harvesting old growth forests.

Unfortunately, FOF has received some bad publicity lately because three of its members were involved in a tree-spiking incident. Although FOF does not approve of such tactics, the media widely reported that the three were FOF members. FOF considers itself a responsible environmental protection group, and it wants to repair its tarnished reputation. It also wants to promote its position that old growth forests must be preserved.

Design a one-page ad that will capture readers' attention, convey a positive image for FOF, and promote FOF's position on the spotted owl controversy.

In your design, you may either draw or describe any art work or photograph that would appear in the ad, but be sure that you write out exactly the words that would appear in the ad. You may also cut and paste from other materials. Show how the art/photo and words should be laid out on the page.

If you have questions about FOF or this project, you can ask their representative, Chris Peters, when Peters is here for a meeting with our president.

Oh, by the way, several other advertising agencies are competing against us for this account. As you know, we need the business, so do your best.

We will be presenting our ad design to the Board of Directors of FOF on ________________. Select a spokesperson for your group who will present your ad to the Board. As a group, decide what your spokesperson should say about the ad's design and why FOF should pick it.

Board's Criteria for Selecting an Ad

Yes	No	
☐	☐	Does the ad help to reestablish WFP's (FOF's) good reputation?
☐	☐	Does the ad promote WFP's (FOF's) position on the old growth forest controversy?
☐	☐	Does the ad grab the reader's attention?
☐	☐	Does the ad use effective paragraph and sentence structure?
☐	☐	Does the ad use effective word choice?
☐	☐	Does the ad use rhetorical strategies effectively?

List which strategies were used.

1. ____________________

2. ____________________

3 ____________________

4 ____________________

5 ____________________

T-Shirt Design for WFP

Congratulations! Your ad campaign has been a big success and now WFP wants you to design some t-shirts that it can pass out at a conference for the timber industry that it is sponsoring next weekend. Once again, WFP's objectives are the same: It wants to create a positive image of the company and promote its position on the spotted owl controversy.

WFP is willing to look at up to four different designs for t-shirts. Obviously quality is more important than quantity, but the more designs they pick, the more we will be paid.

Art work is optional, but be sure the words on each t-shirt are laid out as they should appear on the t-shirt.

The conference is next weekend, so WFP wants to see those designs today!

T-Shirt Design for FOF

Congratulations! Your ad campaign has been a big success and now FOF wants you to design some t-shirts that it can pass out at a conference for environmental groups that it is sponsoring next weekend. Once again, FOF's objectives are the same: It wants to create a positive image of the organization and promote its position on the spotted owl controversy.

FOF is willing to look at up to four different designs for t-shirts. Obviously quality is more important than quantity, but the more designs they pick, the more we will be paid.

Art work is optional, but be sure the words on each t-shirt are laid out as they should appear on the t-shirt.

The conference is next weekend, so FOF wants to see those designs today!

Extension— “Moss Gathering” by Theodore Roethke and “The Rigger” by Charles Oluf Olsen

Sequence

This extension activity should be done after students have done the unit on old growth forests. This lesson also presumes that the students are familiar with imagery in poetry.

Objectives

Students will:

- Be exposed to the poetry of a famous Pacific Northwest poet, Theodore Roethke.
- Review the use of imagery in poetry.
- Compare the themes in the poetry to the old growth forests controversy.
- Respond to the poetry in writing.
- Compare the literary value of two poems.

Materials

Teacher's Notes on Theodore Roethke

Copies of handouts:

- “Moss Gathering”
- “The Rigger”

Vocabulary

- **Desecration**—The abuse of the sacred.
- **Rigger**—Timber worker who climbs to the top of the tree and attaches a pulley wheel to tree trunk, runs one end of cable around wheel and down the tree trunk.
- **Yarder**—Tree-cable-pulley device.
- **Drum**—Big spool device.

Procedures (Part I: “Moss Gathering”)

[This activity was developed by Anne Enquist, adjunct law professor, University of Puget Sound School of Law, for the UPSICEL curriculum *LRE: Linking Language Arts and Social Studies*.]

■ **Begin by asking** students what are some of their favorite activities in the woods. They will probably offer a variety of activities including hunting, fishing, camping, and hiking. Ask them what it is they enjoy about these activities and whether it is important that they are “out in nature.” Ask them to articulate why it is enjoyable to be out in nature. Ask them if they have ever felt that they somehow violated nature by doing some of these activities.

Did they feel as though they had interfered with nature, or did they feel they were one more part of the whole?

■ **Ask them to brainstorm** which activities they feel are (or at least may be) a violation of nature. Record their answers on the board.

■ **Introduce the Northwest poet** Theodore Roethke (see Teacher's Notes on Roethke). Be sure to tell students about Roethke's childhood experiences around his father's florist business. Tell the students that the poem you will be reading is about an outdoor activity that Roethke has mixed feelings about. Point out that the poem does not rhyme but that it gets its poetic effect primarily from imagery.

■ **Read the poem** "Moss Gathering" by Theodore Roethke aloud to your students. Students should follow along on photocopies of the poem.

■ **Have the students** read the poem again, silently, and this time ask them to circle or underline images in the poem that they liked or thought were effective. Have the students say which images they like or think effective. Point out that the images in the first five lines make the moss seem attractive in an earthy way. Point out that the images are both visual and textual. Spend some time discussing the image in the second to last line "by pulling off flesh from the living planet." Why does the poet personify the planet? What would happen if you pulled flesh off a human? Why does the poet want to compare the planet with a human?

■ **Ask the students** if there are any similarities between Moss Gathering and cutting trees? Would Roethke consider cutting old growth forests a "desecration"? Is Roethke likely to side with the timber industry or the environmentalists? How do you know?

■ **Read the poem** aloud again (a good student reader may be preferable to having the teacher read again). Depending on the previous discussion and the ability of the students, you may want to conclude the reading of the poem in any one of the following ways:

- Simply say, let's hear the poem again and have it read aloud.
- Ask the students if they agree with Roethke that Moss Gathering is a desecration.
- Ask students to pay close attention to the order of the words. Which choices strike them as interesting and effective? Does it change the poem to reorder the last line to read "As if I had committed a desecration against the whole scheme of life"?

■ **Assign one** of the following writing options, or allow the students to pick from the list of options.

- Look again at the list of activities that may be a violation of nature. Select one, and using Roethke's pattern, write a poem. The first part of the poem should have many "positive" images that make the activity and/or nature seem attractive. The second part of the poem should describe the writer's mixed feelings about the activity. End your poem with your conclusion about whether the activity was a part of nature or a violation of nature.
- Write a letter to Theodore Roethke telling him your reaction to the poem "Moss Gathering." Be sure to include whether you agree or disagree with his conclusion and why.
- Write a journal entry about an outdoor activity that you participate in that some might consider a violation of nature. Do you agree or disagree? Why?
- (This option can be done if your students have already read "The Rigger" by Charles Oluf Olsen.) Write a one- to two-page discussion of the two poems that ends by saying which poem you think is

the better of the two and why. Consider each poem's message and imagery in determining which is the better poem. You may also want to discuss whether the fact that one poem rhymes and the other doesn't makes one poem better than the other.

Note: Depending on your students' ability, you may want to recommend the following organization for their essay.)

I. Introduction
II. Discussion of the first poem, including message and imagery
III. Discussion of the second poem, including message and imagery
IV. Conclusion that states which is the better poem and why.

- Write a journal entry that discusses whether or not "Moss Gathering" is relevant to the old growth forest controversy.

Procedures (Part II: "The Rigger")

■ **Begin by asking** students what they think the life of a timber worker is like. What parts of the job do they think are exciting and glamorous? What parts of the job seem unappealing? Do they think it would be "great to be outdoors" or would it be cold, rainy, and miserable most of the time?

■ **Before reading** the poem "The Rigger" define the terms "rigger," "yarder," and "drum."

■ **Read "the Rigger"** aloud. Ask if there are any other words that are unfamiliar to the students. Take time to define these words. (The teacher should define them only if other members of the class can't define the words and the class cannot use the context to determine the word's meaning.)

■ **Ask the students** to read the poem again, silently, this time underlining or circling any images that they liked or thought were effective. Have the students say which images they like or think effective. What is the overall effect of these images? What do they focus the reader's attention on? The man? The trees? The rain? Do they make the timber worker's job sound miserable, or do they make the timber worker seem noble or heroic because he can withstand such adverse conditions? What is the poet trying to convey with the last image "where the vision ends and the cloud bank clings"? Is the rhyme in the poem effective? Why or why not?

■ **Ask what** the poet was trying to accomplish by writing this poem? Does the poem have a message? If the class seems to jump too quickly to conclusions about the poem's message, brainstorm the possibilities. Are we supposed to sympathize with the timber worker? Are we supposed to be discouraged from getting this type of job? Are we supposed to respect the timber worker? Are we supposed to understand something better? Which of the images in the poem support these different possible messages?

■ **Ask the students** whether they think Olsen is likely to side with the timber industry or the environmentalists in the old growth forest controversy.

■ **Depending on the previous** discussion and the ability of the students, you may want to conclude the reading of the poem in any one of the following ways:

- Simply say, let's hear the poem again and have it read aloud (a good student reader may be preferable to having the teacher read again).
- Ask students to pay close attention to the order of the words. Which choices strike them as interesting and effective? Point out that the first stanza starts with the rigger's shoes, slicker, and pants and ends with a vision of the whole man in the woods.
- Discuss what the poet's view is of man's relationship to nature.

■ **Ask students** to compare "Moss Gathering" and "The Rigger." Which do they think is the better poem and why?

■ **Assign one** of the following writing options, or allow the students to pick their own assignment from the list of options.

- Write a letter to Charles Oluf Olsen telling him your reaction to the poem "The Rigger." Be sure to include what you think his message was and whether or not he succeeded in conveying this message.
- Write a journal entry about rain in the Northwest. Be sure to refer to the images of rain in "The Rigger." What are your own images of rain in the Northwest?
- Write a journal entry about how your impressions of a logger's life. Have these impressions changed after reading "The Rigger"?
- (This option can be selected if your students have already read "Moss Gathering" by Theodore Roethke.) Write a 1-2 page discussion of the two poems that ends by saying which poem you think is the better of the two and why. Consider each poem's message and imagery in determining which is the better poem. You may also want to discuss whether the fact that one poem rhymes and the other doesn't makes one poem better than the other. (Depending on your students' ability, you may want to recommend the following organization for their essay.

Note: Depending on your students' ability, you may want to recommend the following organization for their essay.)

I. Introduction
II. Discussion of the first poem, including message and imagery
III. Discussion of the second poem, including message and imagery
IV. Conclusion that states which is the better poem and why.

Optional
Have students read the legend of Paul Bunyan and discuss how these tall tales helped form our attitudes about loggers and the work they do.

Teacher's Notes on Theodore Roethke

- Born 1908 in Saginaw, Michigan.
- Died 1963 of a heart attack at the age of 55.
- Grew up around his father's florist business and greenhouses.
- His first book of poems, *Open House* (1941), incorporated many of his early experiences in his father's greenhouses.
- *Lost Son and Other Poems* appeared in 1948.
- Received the Pulitzer Prize in 1954 for *The Waking: Poems 1933-1953*.
- *Words for the Wind* won the National Book Award in 1959.
- Won the National Book Award posthumously for *The Far Field*.

MOSS GATHERING

To loosen with all ten fingers held wide and limber
And lift up a patch, dark-green, the kind for lining cemetery baskets,
Thick and cushiony, like an old-fashioned doormat,
The crumbling small hollow sticks on the underside mixed with roots,
And wintergreen berries and leaves still stuck to the top,—
That was Moss Gathering.
But something always went out of me when I dug loose those carpets
Of green, or plunged to my elbows in the spongy yellowish moss of
the marshes:
And afterwards I always felt mean, jogging back over the logging road,
As if I had broken the natural order of things in that swampland;
Disturbed some rhythm, old and of vast importance,
By pulling off flesh from the living planet;
As if I had committed, against the whole scheme of life, a desecration.

THEODORE ROETHKE

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The Rigger

By Charles Oluf Olsen

With steel-caulked shoes
That bite and grip,
With their laces hid
So they cannot trip:
With slicker short, for the sake of ease,
And tin pants stagged, close to the knees,
He takes the trail among the trees.

The rain comes down
With a sidelong sweep:
The branches softly sway and weep,
And make a pool where the trail is deep.
He casts a vigilant glance on high–
Overhead–where the fir-tops sigh;
The water pours from his glazed hat brim
As he looks aloft from under the rim.

He leaps a puddle and swears a bit,
At the wet and the wind
And the chill of it;
Rivulets trickle and flow and leap,
And cascade down
Where the ground is steep/
He wades through mud where the yarder stands,
And climbs to the boiler
To warm his hands;
He grabs his gloves, takes a chew of snoose,
And joins the crew.

That by threes and twos
Plod out to their work through the muck and ooze.

The yarder-drums stir,
And the cables glide
Up through the high-lead and down beside;
Liquid, enveloping, yellow-brown mud,
Clings to them, covers them,
Drains in a flood
From their thread-like lengths,
As they tighten and slack
Over the road to the woods and back;
From spar-pole blocks
Comes a steady rain
Of spattering slush, as they swing and strain.

The loaders stand knee-deep
In debris and mire,
Over a sodden, smoke-blanketed fire
That sulks and sputters,
And will not burn.

The chaser sits hunched, awaiting the turn;
All his garments are slushy,
And down
From his paraffined pants
Stream small rivers of brown;
Where the sticky clay stain
From choker and chain
Dissolves in the wetness and colors the rain.

Incessant–depressing–benumbing and chill;
Drizzle and splash,
Over yard, over fill–
Above and beyond–to the end of things,
Where the vision ends
And the cloud bank clings.

Charles Oluf Olsen. From *Heroes of the Western Woods*, R. Andrews, ed. E.P. Dutton & Company, 1960.

Extension— "Talking Mouth"

Sequence

This activity can be used after the students have completed the congressional hearing on the old growth forest controversy.

Objective

Using a pop-up technique called "Talking Mouth," at the end of Lesson 3, the students will order data favoring *Saving the Old Growth Forests* and data favoring *Harvesting the Old Growth Forests* and synthesize this information into a single word.

Materials

- One 12" X 18" sheet of colored construction paper per student.
- One 12" X 18" sheet of white construction paper per student.
- Fine tip black felt pens.

Procedures

■ **Instruct the students** to fold a piece of notebook paper in half. This will become a rough work sheet for the activity. Label one side *Saving the Old Growth Forests* and label the other side *Harvesting the Old Growth Forests*. Working with 2 or 3 other students, list as many separate pieces of data possible for favoring each position. Encourage the students to reread all the information they have to cull out every possible fact for either position.

■ **Pass out** one sheet of colored construction paper and white construction paper to each student. Tell the students to fold each sheet exactly in half horizontally. It's important that the corners fit together and the crease is sharp.

■ **Put aside** the colored piece. On the white piece, put a dot in approximately the center of the *folded* edge.

■ **Draw** a 2- to 3-inch line from the dot towards the outer edge.

■ **Starting** at the folded edge, cut on the line.

■ **Fold back** the flaps to form two triangles.

■ **Fold** these flaps back and forth several times. The more times the fold has been creased, the better this pop-up works.

■ **Open up** the flaps again. Open the whole page.

■ **Here's the hard part**. Hold the paper so it looks like a little tent. Put your finger on the top triangle and push down. Pinch the two folded edges of the top triangle, so that the triangle is pushed through to the other side of the paper.

■ **Put your finger** on the bottom triangle and do the same thing. The top and bottom triangles will now be pushed out to form a mouth inside the paper. When you open and close the paper, the mouth will look like it is talking.

■ **Tell the students** to open the white paper so the mouth is talking. On one side of the fold line they should copy from their rough work sheet all the data favoring *Saving the Old Growth Forests*. On the other side, copy their data favoring *Harvesting the Old Growth Forests*. Use a black felt tip pen so the writing is clear and easy to read.

- **Now, open** the white paper and place it inside the colored construction paper so the center folds and the corners match. Tell the students to draw *lightly* around the inside of the "mouth" on to the colored paper. Remove the white paper, and inside the mouth outline, write a word that epitomizes or summarizes the two sides of this issue in large letters. Outline the letters in black or some other color to facilitate easy reading.

- **Carefully glue** the inside of the white paper to the colored paper. Do not apply glue in the area of the pop-up mouth.

- **Hang the pop-ups** around the room and discuss the words chosen for the mouth-piece. Compare data.

[Adapted from *How to Make Pop-Ups* by Joan Irvine, Morrow Junior Books, 105 Madison Avenue, New York, NY, 10016, ISBN 0-688-07902-4, pp. 22-23, $6.95.]

Extension— Book of Knowledge

Sequence

This activity can be used after the students have completed the congressional hearing on the old growth forest controversy.

Objective

The students will create a Book of Knowledge about Old Growth Forests to provide time for personal knowledge acquisition and processing and time for reflection.

Materials

- Half sheets of drawing paper.
- Smaller rectangles of lined paper (optional).
- Fine tip black felt pens.
- Colored pencils or markers (optional).

Procedures

■ **To culminate** or review this unit of study, tell your students they are going to write a Book of Knowledge. While a Book of Knowledge is a series of illustrations or drawings and descriptions about any topic, they are going to focus on Old Growth Forests. For example, they might choose to draw a spotted owl, a nurselog, the growth of fungus on fallen trees, the bio-diversity of snags, activists "hugging" a tree, logs being shipped to Japan, and a courtroom depicting *Northern Spotted Owl v. Hodel* with accompanying descriptions as representative of their study.

■ **Use lined paper** to write the description on. Do the drawing. Glue on the description. Put one item on a page.

■ **Set a certain number** which will be acceptable. Fifteen to twenty items tend to reveal student comprehension.

■ **Make a cover**. Some students like to write a dedication. Some teachers require a Table of Contents, an Index, or Chapters. Some combine this activity with an A-B-C theme.

■ **Be sure** to allow time for the students to read and comment on each other's work.

[From *Strengthening Your Fifth Grade Program Using Outstanding Whole Language and Integrated Instruction Techniques* by Tarry Lindquist.]

Extension—Cartooning

Sequence

This activity can be used after the students have completed the congressional hearing on the old growth forest controversy.

Objective

At the end of the hearing, the students will draw cartoons of important concepts and information regarding the issue.

Materials

- Standard ditto paper.
- Colored markers and/or black felt tip pens.

Procedures

■ **Give each student** a piece of paper. Tell them to fold the paper in half. Then tell them to fold the paper in half again to make a mini four page book.

■ **Brainstorm a list** of concepts or information they recall from their reading and the Senate hearing that would be fun to cartoon.

Some suggestions are "couch potato" environmentalists, tree spiking, threatened vs. endangered, biological deserts, new forestry, nurselog, diversity, picky eaters, indicator species, tree hugging, "legal tool."

■ Instruct the students to draw four cartoons, one per page, to illustrate various points of view about the old growth forest issue. You might want to bring in some *Far Side* cartoons and/or some political cartoons as pieces to analyze to discover what makes a cartoon effective.

■ Organize the students into small groups to share their books. Encourage positive comments. When those groups have shared, ask the students to jigsaw with students they haven't shared with yet. Continue sharing and jigsawing until all the students have read and enjoyed each other's quartiles.

[From *Strengthening Your Fifth Grade Program Using Outstanding Whole Language and Integrative Techniques* by Tarry Lindquist.]

Extension— Models or Data Disks

Sequence

This activity can be used after the students have completed the congressional hearing on the old growth forest controversy.

Objective

The students will construct:

- A model of our old growth forests, or
- A data disk of an animal of our old growth forests

and orally present this information to younger students in an engaging and informative way.

Materials

- Assorted art materials.
- Resource and reference materials.

Procedures

■ **Share with the students** that research shows that we remember 60% of what we do and experience and 90% of what we attempt to teach others (Kettering Foundation). Therefore, this activity will combine both elements, doing and teaching, to help us learn more completely. We will also help younger students understand the old growth forest controversy.

■ **List the information** or sources about the old growth forest that have been discovered to this point. Brainstorm the animals and birds who live in old growth forests.

■ **Ask students** what considerations they might be concerned about if they were going to construct a model of an old growth forest.

■ **Introduce** the data disk strategy. (See model attached.) Ask students what they could do with this strategy to make it more engaging and informative for younger children.

■ **Tell students** that they may work alone or in groups, but their task is to either construct a model of our old growth forests or create a data disk about an animal/bird who lives in the old growth forests. The model or disk will become a teaching tool as they will be expected to teach key concepts and knowledge to younger children. Set age level (third grade would be very appropriate). Determine a time table. Monitor progress.

■ **When projects** are complete, brainstorm with the students the parts of a lesson that are important.

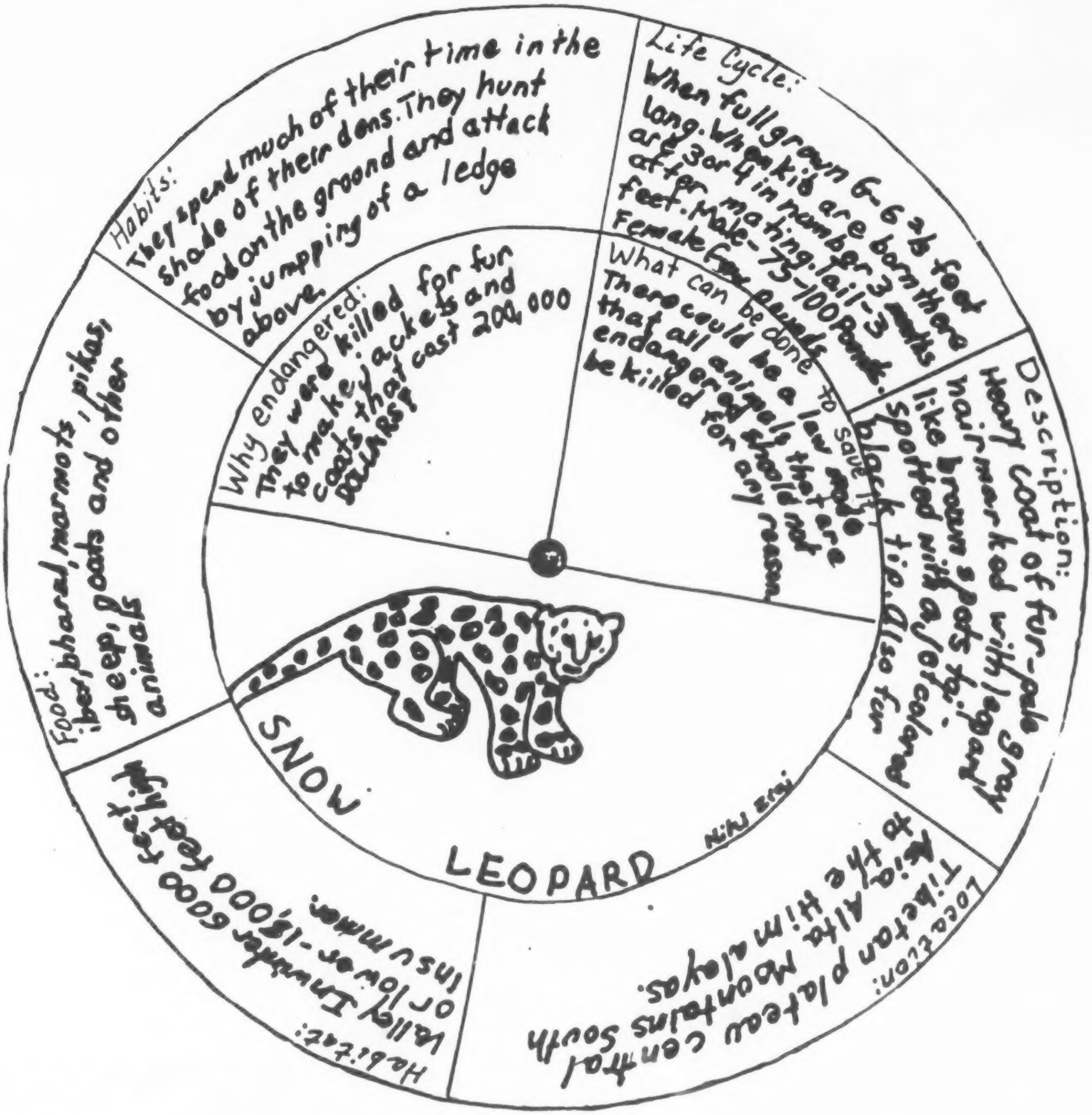
Mention interpersonal aspects such as introductions of themselves to the students, making eye contact, using humor and being friendly but in control. Identify specific lesson pieces such as motivation (giving reasons for the lesson), making it engaging, interactive, and finding some simple way to evaluate the effectiveness.

Have the students write a simple lesson plan and put approximate time periods for each step in the procedure. Be sure to check these plans because you can circumvent potential problems before they happen.

■ **Teach the lessons**. You may want to arrange to take your class to another classroom for a 30 to 50 minute period. It is important that teachers be present to supervise and support the students in this activity.

■ **Evaluate the total activity** with the class: the construction of the model or data disk, the designing of the lesson, and the presentation of the lesson. Asking the students to write a reflective piece, e.g., "My Life as a Teacher" will invite the students to look at their own learning as well as their teaching.

Sample Data Disk



Habits: They spend much of their time in the shade of their dens. They hunt food on the ground and attack by jumping of a ledge above.

Life Cycle: When full grown 6-6 ½ feet long. When kids are born there are 3 or 4 in number 3 months after mating. Tail-3 feet. Male-75-100 pounds. Female pounds.

Description: Heavy coat of fur-pale gray hair marked with leopard like brown spots tip. spotted with a lot colored black tip. Also fur

Location: Tibetan plateau central Asia, Alta Mountains South to the Himalayas.

Habitat: Valley In winter 6000 feet or lower-18,000 feet high in summer.

Food: ibex, bharal, marmots, pikas, sheep, goats and other animals

Why endangered: They were killed for fur to make jackets and coats that cost 200,000 DOLLARS!

What can be done to save it: There could be a law made that all animals that are endangered should not be killed for any reason.

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Japanese American Internment

Introduction

Description

This unit examines the internment of Japanese Americans during World War II by focusing on the case of Gordon Hirabayashi, an individual who challenged the military internment orders. The unit begins by having students immerse themselves in the culture of the 1940s by reading literature about the period, creating magazines, and interviewing individuals who lived during the period. Students then examine Gordon Hirabayashi's trial, and use original legal documents from his case to make closing arguments to the jury in a reenactment of his trial. Finally, students study and make arguments in the U.S. Supreme Court cases that ruled on the constitutionality of the internment.

Use of Outside Resource Persons

Community members who are former internees, or were living during World War II would be excellent resources for this unit. A lawyer or judge could be invited to talk about due process and equal protection, and the current state of the law.

Time Required

12 to 14 class periods (if all lessons are used).

Overall Outcomes

This unit blends Social Studies skills, concepts and attitudes, Language Arts, including Reading, and Art, with practice in critical and creative thinking. Cooperation and compromise are essential to the unit's success in the classroom. Teachers will discover the integration of content facilitates finding the blocks of time needed to teach the unit, while the extension activities provide concrete ideas for individual student exploration and enrichment.

Social Studies Outcomes

The students:

- Use primary documents to trace the internment of Japanese Americans during WWII.
- Recognize the value of cultural pluralism.
- List characteristics of an indictment.
- Recognize the role Gordon Hirabayashi played in history.
- Explain the purpose of a closing argument to a jury in a trial.
- Formulate closing arguments, using original documents.
- Analyze issues raised by the jury instructions in Hirabayashi's trial.
- Demonstrate an understanding of the political climate surrounding the U.S. Supreme Court in 1943.

Language Arts and Reading Outcomes
The students:

- Develop a logical sequence of ideas from a given situation.
- List positive and negative attributes.
- Identify facts of a case based on original documentation.
- Organize data.
- Analyze and argue for one side of a case.
- Respond to arguments with counter arguments.
- Read and discuss law-related material.
- Develop questions in an appellate argument.
- Read and analyze a variety of primary documents.

Art Outcomes

- Design a layout for a magazine.
- Create a cover and advertising for a magazine.
- Enjoy participating in a cooperative graphics project.

Higher Order Thinking Skills Outcomes
The students:

- Practice independent decision-making.
- Practice group decision-making.
- Develop arguments based on primary documents.
- Solve problems related to an historical event.
- Demonstrate the ability to discuss history from more than one point of view.
- Identify consequences of civil disobedience.
- Develop persuasive speeches.
- Use brainstorming, cooperative problem solving and independent decision making.

Bibliography

Thanks to Paula Fraser for assistance in compiling this bibliography.

For a comprehensive listing of books in English about Japanese Americans, see *Books-in-Print: Japanese in the Americas*, 1986. Order from: The Japanese American Library, 1759 Sutter St., San Francisco, CA 94115 (415) 567-5006.

History

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Daniels, Roger. *The Politics of Prejudice*. University of California Press. 1962.

Davis, Daniel. *Behind Barbed Wire: The Imprisonment of Japanese Americans during World War II*. New York: E.P. Dutton. 1982. Describes how the Japanese Americans were determined to survive, and how they lived with the horrors of imprisonment and were able to create new lives for themselves afterward.

Irons, Peter. *Justice at War: The Story of the Japanese American Internment Cases*. Oxford University Press. 1983. Story of the decision to intern the Japanese during World War II, and the role of government lawyers in the decision. Irons was instrumental in initiating the *coram nobis* proceedings in the 1980s, and tells the story of discovering the government's role in suppressing evidence at the trials and appeals during the World War II.

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Novels, Personal Recollections

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Garrigue, Sheila. *The Eternal Spring of Mr. Ito*. Don Mills, Ontario: Collier Macmillan. 1985. The Japanese attack on Pearl Harbor shatters the world of Mr. Ito, a gardener who works for a Vancouver, BC, family; he and his wife and children are sent to an internment camp.

Hamanaka, Sheila. *The Journey*. Orchard Press. 1990. Summary of the story of the internment, illustrated with beautiful color reproductions of paintings by the author from a mural that tells the story of the internment, from immigration through redress.

Houston, Jean Wakatsuki. *Farewell to Manzanar*. Bantam Books. 1974. A true story of Japanese American experience during and after World War II internment.

Houston, Jeanne W. *Beyond Manzanar*. Capra Press. 1985. Views of Asian-American womanhood.

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Nomura, Kenjiro. *An Artist's View of the Japanese Internment*. Seattle, WA: Wing Luke Asian Museum. 1991. Consists of sketches and paintings produced by the artist while he was interned at Minidoka, Idaho during World War II.

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Okada, John. *No No Boy*. University of Washington Press. 1957, 1990. Story of Ichiro who spent two years in a federal penitentiary after refusing loyalty to the U.S. and military service when he faces the post World War II Japanese community in Seattle.

Okubo, Mine. *Citizen 13660*. Seattle, WA: University of Washington Press. 1983. Personal recollections of author's internment experience, illustrated with drawings by the author.

Sone, Monica. *Nisei Daughter*. University of Washington Press. 1953, 1989. Nisei girl tells about growing up on Seattle's waterfront and internment experience.

Takashima, Shichan. *A Child in Prison Camp*. Montreal, Quebec: Tundra Books. 1971. Personal narratives of children who were interned in Japanese internment camps during WWII.

Uchida, Yoshiku. *Desert Exile: The Uprooting of a Japanese American Family*. University of Washington Press. 1982. Personal account of a woman living in Berkeley who lives through internment years and takes a look back at her parent's early years in this country and her own experiences as a Nisei growing up.

Uchida, Yoshida. *Journey to Topaz* and *Journey Home*. Creative Arts, rev. ed. 1985. Story of child and her family's treatment after Pearl Harbor. Sequel *Journey Home* tells about their lives after their return home from internment. For young readers.

Uchida, Yoshida. *The Invisible Thread*. New York: Simon and Schuster. 1991. Autobiography of children's author, Uchida. She describes growing up in Berkeley, CA as a Nisei, and her family's internment in a Utah camp during WWII.

Drama

Breaking the Silence: Japanese Voices in America by Nikki Nojima Louis. Play of oral histories. Three acts: Issei, Nisei, Sansei. For more information, contact Nikki Louis at 206-525-9828.

Unvanquished by Holly Yasui. The story of Minoru Yasui, one of the few Japanese Americans who defied the government's military orders. Yasui was arrested for violating the curfew order in Portland, Oregon. The play, written by his daughter, is set in his jail cell, with flashbacks portraying events leading to his imprisonment. For more information, contact Holly Yasui at 206-632-6172.

Videotapes

Unfinished Business, The Japanese American Internment Cases, Steven Okazaki. 60 minutes. Mouchette Films, 548 Fifth St., San Francisco, CA 94107, 415-495-3934. Rental: $125 classroom showings. Gives overview of Hirabayashi, Korematsu and Yasui cases.

Days of Waiting, Steven Okazaki. 30 minutes. Mouchette Films, 548 Fifth St., San Francisco, CA 94107, 415-495-3934. Story of Caucasian woman who went with her husband to detention camp.

A Personal Matter: Gordon Hirabayashi v. United States, The Constitution Project, PO Box 1787, Portland, OR 97207, 503-224-6722. Order from Crosscurrent Media, 346 9th St., 2nd Floor, San Francisco, CA 94103 (415) 552-9550.

Without Due Process—availability unknown.

Home from the Eastern Sea—availability unknown.

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
MUSICAL

Japanese American Internment

Lesson 1

Objectives

- The students will read historical literature or biographies about the internment of Japanese Americans during WWII and share their perceptions, knowledge, and feelings with other students through some kind of product.
- The students will brainstorm a list of things they want to know about internment, the culture of the late thirties and early forties, and legal proceedings during times of war.

Materials

Copies of the Bibliography (in the Introduction to this unit).

Time Required

3 to 4 class periods.

Procedures

■ **Write the word** "Internment" on the board or overhead and ask the students to share words they associate with internment. Probe for the reason why a student chooses a certain word, e.g.:

> *Student: "Barbed."*
>
> *Teacher: "Why?"*
>
> *Student: "Barbed wire was strung around the fences to keep Japanese Americans inside the camp."*

> **Note**: Many students may know little or nothing about the internment of Japanese Americans during WWII. This opening activity should raise their awareness and elicit questions. Do not expect Japanese-American students in your class to be any more informed or "tuned in" than any of your other students.

If questions are raised during this activity, write them down, but don't spend time answering them now. That is part of the next step of this introductory set.

■ **Pass out** the bibliographies and ask the students to select one of the books from the list to read within the next few days. Ask them to produce a product that will share their perceptions, knowledge, and feelings regarding internment. Included in this lesson are some suggestions your students might enjoy using for this sharing: Interior monologues and journals are individual activities, while poems for two voices and one-page plays are more cooperative in nature. (Procedures for these extension activities are provided at the end of this lesson.)

■ **Give students** several days to read their books, and prepare their product. Then, share the products in class. It is important that the students view this time as a pooling of both data and affective response. Respecting peers' perceptions and discoveries is an important part of the process of this unit.

■ **At the end** of each student's sharing, ask the student if there are any questions he/she has as a result of this reading and sharing. Then, ask the class if they have any additional questions. Record all of the questions.

■ **Post the students' products** and encourage leisurely perusal and conversation about them.

Extension — Interior Monologues

> **Note**: Interior monologues provide students an opportunity to explore a topic in depth. This strategy is also a way to make a topic more personal. The interior monologues strategy comes from Marj Montgomery, Day Junior High in Newton, MA.

Procedures

■ **Tell the students** that today they are going to be philosophers, people who think seriously about issues and topics that matter.

■ **Ask the students** if they ever have conversations inside their heads, if they ever think both sides of a conversation. Mention that many of us do and it is often very helpful. We can plan, ramble on, or revise without anyone ever knowing but us! We call this process interior monologues.

■ **There are two formats** for interior monologues:

- One character or writer pretends that he/she is talking to someone else. The narrator introduces him/herself and then proceeds to tell the other person some of his/her innermost thoughts. The narrator can ramble on and explain in some detail because it is assumed that the person to whom the narration is addressed will never actually hear the thoughts.

  Or:

- The student actually writes his or her own thoughts about the topic or issue into an interior monologue. The student does not need to introduce him or herself, as they are simply talking in their own minds. It is the depth of the thought that counts. The writing is very similar to poetry, and is a good way to get students to take a personal stand on an issue after reading literature or about some current or historical event.

Extension — Poems for Two Voices

Note: Poems for Two Voices offers a wonderful way to present two perspectives or opposing points of view. Students can do these individually or in pairs, but either way, the poem is a dialogue for two opposing points of view. These are best read aloud by two people.

The structure is simple: each voice speaks individually and then the two voices speak together, commenting on something on which they agree or agree to disagree. For more about Poems for Two Voices, see book *Poems for Two Voices* by Fleishman.

Procedures

■ **Copy a sample poem** from Fleishman's book or use the sample provided on page 303 in Lesson 5 of the Salmon Summit unit. Ask for volunteers to read the sample aloud. Discuss the form used:

Voice One

Voice Two

Things Agreed Upon
To Be Read Jointly

■ **Ask students** to either pair up or individually write a poem for two voices about some aspect of the internment. The length of the poem is up to the author(s), but there needs to be enough written so that the ideas are explored in depth. The two sides do not have to agree by the end of the poem.

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
MUSICAL
KINESTHETIC

Japanese American Internment

Lesson 2

Objectives

- The students will work cooperatively to create a magazine reminiscent of the late '30s and early '40s, reflecting attitudes, values, and the culture of that time.
- The students will evaluate what they have learned as a result of this activity, based on a pre/post survey.
- Students will interview parents, grandparents or neighbors who lived during World War II about their experiences, and as an extension prepare oral histories to share with the community.

Materials

Copies of questions students posed during Lesson 1.

Copies of *Time* or *U.S. News & World Report*, *People*, *Sunset*, and *Ladies Home Journal* (or other magazines representing different genres).

Large white construction paper, other art and print supplies to make the magazines.

Copies of handouts:

- Student survey
- Chronology

Time Required

3 to 5 class periods.

Procedures

■ **Pass out** the student questions. Discuss them and ask the class for alternative ways to find the answers and share them. If it doesn't come up, add the ideas of interviewing people who lived during that time, and using magazines as a format.

■ **Hold up copies** of different magazines and ask the students to briefly describe the audience each tries to reach and how each organizes its content. This will be a very broad and general discussion.

■ **Suggest to the students** that they could use the magazine format to create their own magazines about the late '30s and early '40s to answer many of the questions posed by the students. Share the concern that it is much easier to second-guess decisions. What we want to determine, by the end of this unit, is: *Should the U.S. government have been allowed to set curfews, limit travel, and put Japanese Americans in internment camps, based on the tenor of the times?* What we need to do first is to discover what, exactly, was the tenor of the times? Class-created magazines could help us all understand better the attitudes, values and culture of that period in our history.

■ **Assign or have** the students form groups. It does not matter if some groups do the same magazines, e.g. two groups are making *Time*. It is more effective, however, if several magazines with different purposes and audiences are replicated.

■ **First, the groups** need to analyze the format of their magazine. Using the Table of Contents, they need to assess what kind of articles, advertising, and editorial slant predominates in their chosen magazine. Then they need to agree on lay-out, responsibilities for articles, and a time line. Teachers may request that the groups "check-in" periodically with progress reports. Bring in some music from the 1940s to play while students work.

> **Note**: Some teachers may want to standardize the number of pages, the general content, and the time line. Other teachers may be comfortable having the students determine the magazine content independently. What will be important is that all students understand what the assessment procedure will be and what is expected of each student.

■ **Students should** fill out the pre-activity survey and hand in to the teacher or store for later reference.

■ **Encourage students** to prepare a survey and to poll family members or neighbors who lived during WWII. By interviewing and polling individuals who actually lived through the period, students will gain more understanding about the tenor of the times, and of how people they know actually felt about the internment. This will also help them in gathering stories for their magazines. They can use the Student Survey as a guide for questions for their poll. Encourage them to add questions about the internment specifically.

■ **Students should** complete their magazines on or about the same date and share them with the class. When all have been shared, students should fill out the post-activity survey, compare it with the pre-survey and discuss the differences. The magazines should be left on display for the rest of the unit.

■ **Finally, pass out** the Chronology, which students can use as a reference for the study of this unit.

Community Service Learning Extension

Have students who conducted interviews prepare an oral history that can be shared with other students at your school, and with the larger community. The local newspaper might be interested in publishing some of the stories, especially at anniversary dates, such as December 7 (bombing of Pearl Harbor) or the date that Executive Order 9066 was signed (February 19).

Student Survey

So, What Do I Know or Think I Know about America in the Late '30s and Early '40s?

What kind of music was popular? Name three popular songs.

Who was president? What were prevailing political opinions?

What was the economic picture?

What was the status of the average woman?

What was the status of people of color?

Who were the heroes and heroines?

How were children viewed? Education?

Describe the fashions for men and women.

What were popular leisure time activities?

What was innovative or new in technology?

What was the attitude about food and diet?

What were current health issues?

Describe the demographics of the U.S.A. in general terms.

Chronology of Events — Japanese American Internment

Early 1900s	Japanese encouraged to immigrate to the western U.S. in order to provide cheap farm labor.
1905	San Francisco Chronicle articles appear about "The Japanese Invasion;" "Brown Men an Evil in the Public Schools."
1913	Webb Act — California Alien Land Law, denying Japanese born in Japan the right to own land in California.
April 23, 1918	Gordon Hirabayashi born in Seattle, Washington.
1924	Immigration Exclusion Act — Closed all immigration to the U.S. from Japan.
1918–1937	Hirabayashi educated in public schools of King County, Washington, active in Boy Scouts.
1937	Hirabayashi enters the University of Washington, where he is active in the YMCA and Society of Friends (Quakers).
December 7, 1941	Japanese planes bomb Pearl Harbor.
December 8, 1941	U.S. declares war on Japan.
February 19, 1942	President Roosevelt signs Executive Order No. 9066.
February 20, 1942	Lt. General DeWitt is appointed Military Commander of the Western Defense Command.
March 2, 1942	In Public Proclamation No. 1, DeWitt creates Military Areas One and Two on the West coast and warns that "persons or classes of persons" as the situation may require will be excluded from Military Area One (western half of CA, OR, and WA, and southern AZ).
March 18, 1942	War Relocation Authority established, to coordinate evacuation program.
March 21, 1942	Roosevelt signs **Public Law 503**, enacted by Congress to impose criminal penalties to punish violation of the military orders issued by DeWitt. It was a misdemeanor to knowingly violate orders.
March 24, 1942	DeWitt institutes in Military Area One an 8 p.m. to 6 a.m. **curfew** for all persons of Japanese ancestry, both aliens and Japanese American citizens (Public Proclamation No. 3 — "curfew order"). Civilian Exclusion Order No. 1 issued, ordering the 54 Japanese American families living on Bainbridge Island to report to Puyallup Assembly Center.

March 27, 1942	DeWitt orders that after March 29, 1942 no person of Japanese ancestry will be permitted to leave Military Area One (Public Proclamation No. 4 — "freeze order").
May 4 & 9, 1942	Gordon Hirabayashi, University of Washington student, violates curfew order, by staying in the library to study with his classmates (he keeps diary, in which he records his curfew violations).
May 10, 1942	Civilian Exclusion Order No. 57 (covering University District area where Hirabayashi lived) issued by General DeWitt, ordering all persons of Japanese ancestry to report on May 11 or 12 to Civil Control Station in Seattle.
May 11–12, 1942	Hirabayashi fails to report to Civil Control Station.
May 16, 1942	Hirabayashi reports to FBI, and is taken to jail for violation of Exclusion Order No. 57; FBI finds diary and he is also charged with violation of curfew order.
October 1942	Hirabayashi tried before a jury and the Honorable Lloyd Black, U.S. District Court, Western District of Wash., Seattle, Washington, and found guilty of violation of the curfew and exclusion orders.
June 1943	Hirabayashi's conviction unanimously upheld by the U.S. Supreme Court.
December 17, 1944	War Relocation Authority announces that camps will close.
1976	President Gerald Ford rescinds Executive Order 9066 and calls the internment a "mistake."
1980	Congress creates the Commission on Wartime Relocation and Internment of Civilians; repeals Public Law 503.
1980–1982	Researcher Aiko Herzig-Yoshinaga finds documents at National Archives proving that government lawyers suppressed evidence at Hirabayashi's trial.
1983	Hirabayashi files petition for writ of *coram nobis*, seeking vacation of his convictions, on the grounds that the government knowingly suppressed evidence during his trial and appeal.
September 1987	Ninth Circuit Court of Appeals grants petition to vacate, or set aside, both convictions.

LINGUISTIC
INTRAPERSONAL
LOGICAL/MATHEMATICAL

Japanese American Internment

Lesson 3

Objectives

- Students will learn about Gordon Hirabayashi's life.
- Students will define "indictment" and read the actual indictment filed in Gordon Hirabayashi's case.

Materials

Copies of handouts:

- Good Times, Bad Times
- Background
- Orders
- Indictment

Videotape, "A Personal Matter" (optional)

Time Required

1 to 2 class periods.

Procedures

■ **Tell students** that you will now be focusing on the life and court case of one Japanese American who challenged the internment orders. That person is Gordon Hirabayashi. At this point, you may show the 30-minute videotape about Gordon Hirabayashi "A Personal Matter," by the Constitution Project. In the alternative, you may wish to wait and show the video at the end of this unit.

■ **Have students read** the handout from Dr. Hirabayashi's pamphlet "Good Times, Bad Times." Ask for student reactions to the videotape and/or readings. What sort of person is Gordon Hirabayashi? What do you think motivates him?

■ **Pass out** the handout "Background," and ask students to read the background information about the case (or you may read aloud to them). Ask questions to check for understanding:

- What was the mood of the country in 1942?
- Why were people afraid?
- What role did the press play?
- What did President Roosevelt do?

■ **Pass out** copies of Executive Order 9066, the curfew order (Public Proclamation No. 3), and an Exclusion Order, all handouts following this lesson. Explain that after President Roosevelt issued Executive Order 9066, the Military Commander, Lt. Gen. J.L. DeWitt, issued the other orders.

■ **Ask students** to read the Executive Order and then compare the language with that of the curfew order and the Exclusion order. Ask students what differences they see. Who does each order apply to?

The Executive Order refers to "any or all persons." The curfew order applies to "all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas...." The Exclusion Order refers to "all persons of Japanese ancestry, including aliens and non-aliens." Analyze and compare the differences. For example, be sure that students notice in the curfew order that only *alien* Germans and Italians are covered, while *all persons* of Japanese ancestry are included.

■ **Look at the indictment**. Ask for a definition of the word "indictment."

The indictment is the formal written document prepared by the government, and issued by a grand jury, charging the defendant with committing a crime or crimes.

■ **Ask students** to read through the document, and check for understanding by asking the following questions:

- **What court** is the case being tried in?

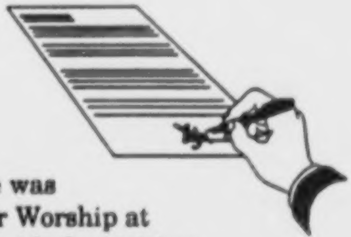
  The U.S. District Court for the Western District of Washington, Northern Division.

- **How many counts**, or charges are there? What laws does the indictment say he violated?

  There are two counts, which means that he is charged with two crimes. The first is for the violation of Civilian Exclusion Order No. 57. The second is for violation of Public Proclamation No. 3. Ask students to look at these two orders again. Explain that the government has the burden to prove these charges beyond a reasonable doubt.

Good Times, Bad Times

By Gordon Hirabayashi



It was a quiet, Sunday morning in Seattle; the date was December 7, 1941. We had just finished Meeting for Worship at the University Friends Meeting and had drifted outside for visiting. Then, one of our members who had stayed by the radio, broke the morning news: Did you know that Japan attacked Pearl Harbor in Hawaii? We are at war!

It was unreal. The impact was not to sink in for some time. For me, it was not only the tragedy and stupidity of war; the war was between my country and my heritage country. With racism rampant on the west coast, especially towards Asians, how will we confront the anticipated hostility and hysteria? What will happen to my parents and others of their generation? Since they were immigrants legally ineligible for naturalization, the war with Japan had instantly transformed them into, technically, "enemy aliens"....

At the end of March 1942 ... I was a senior at the University of Washington. By that time some Japanese Americans in Seattle were already being uprooted and detained in temporary internment camps. So I had volunteered for the just-established, fledgling American Friends Service Committee, with Floyd Schmoe as my boss. We were primarily responding to emergency calls relating to families with young children whose fathers had been arrested and interned immediately after Pearl Harbor. With only the mother to organize the closing of the house, shepherd the children to pack and carry their allowed two bags each, we tried to help and ease their way into captivity—to where and for how long we did not know.

With mounting hysteria following Pearl Harbor President Roosevelt had issued on February 19, 1942, the Executive Order 9066, delegating to the Secretary of War and to the military commanders under him, authorization to effect national security, especially regarding espionage and sabotage. Although it was not intended to supersede the U.S. Constitution, General DeWitt of the Western Defense Command issued a series of proclamations regarding curfew (which restricted the movements of all enemy aliens, that is, German, Italian, Japanese, plus all others of Japanese ancestry, to their residences between 8 p.m. and 6 a.m.) and the exclusion order (not just to enemy aliens alone as I had anticipated, but instead only to "all persons of Japanese ancestry, both alien and non alien.")

The references to "all others" and "non alien" of Japanese ancestry were euphemisms for American citizens. Further, I no longer use the misleading term which the government invented during WWII and still continues to use to this day: "evacuation." Evacuation refers to the humanitarian process by which victims of floods, earthquakes, fires and like catastrophes are rescued, usually at their request and for their benefit. It is a totally inappropriate euphemism in the case of Japanese Americans during WWII. More appropriate would be forced removal or uprooting. Similarly, prisoner for evacuee, concentration or internment camp for relocation center. In Germany they have stopped using long ago the Nazi euphemisms for similar circumstances.

When the Exclusion Order was posted on telephone poles specifying the deadline for forced removal for my district, I was confronted with a dilemma: Do I stay out of trouble and succumb to the status of a second class citizen, or do I continue to live like other Americans, and thus disobey the order? I was not accustomed to disobeying the government. At the same time I was not sure I could abandon my values, goals and self respect, and still be useful to my family, community and country.... After serious assessment, I regretfully had to violate the mass exclusion order....

[Then Hirabayashi describes how he was approached by a friend who asked if he wished to initiate a test case to challenge the military orders.]

Excerpts are from *Good Times, Bad Times: Idealism is Realism* by Gordon Hirabayashi, Argenta Friends Press (1985). Used with permission.

United States v. Gordon Hirabayashi Background

In early 1942, the United States was at war with Japan, following the surprise attack on Pearl Harbor on December 7, 1941. Almost immediately, the Japanese went on to attack Malaysia, Hong Kong, the Philippines, and Wake and Midway Islands. Many people feared Japanese air raids and invasion of the west coast by Japanese forces. Attitudes toward Japanese Americans went from relative tolerance to hostility. For example, Henry McLemore, a syndicated columnist wrote in his January 29, 1942 column in the San Francisco *Examiner*:

> "I am for the immediate removal of every Japanese on the West Coast to a point deep in the interior.... I don't mean a nice part of the interior either. Herd 'em up, pack 'em off and give 'em the inside room in the badlands.... Personally, I hate the Japanese. And that goes for all of them."

Other newspapers carried reports of "fifth column" [a term given to civilian sympathizers] activities by Japanese aliens and Japanese-American citizens living on the west coast of the United States. *The Washington Post*, on February 17, 1942, carried a column by Walter Lippmann, the nation's most prestigious political commentator, under the headline:

> **"The Fifth Column on the Coast"**
>
> "It is a fact that communication takes place between the enemy at sea and enemy agents on land....
>
> [The fact that since] the outbreak of the Japanese war there has been no important sabotage on the Pacific Coast . . . is a sign that the blow is well-organized and that it is held back until it can be struck with maximum effect....
>
> Nobody's constitutional rights include the right to reside and do business on a battlefield.... And nobody ought to be on a battlefield who has no good reason for being there. There is plenty of room elsewhere for him to exercise his rights."

Reacting to public pressure, and relying on the advice of the War Department that military necessity required it, President Franklin D. Roosevelt issued

Executive Order 9066 on February 19, 1942.

Congress passed Public Law 503 a few weeks later, making it a crime to violate any of the orders that military commanders prescribed. Lt. General John L. DeWitt, appointed Military Commander of the Western Defense Command on February 20, 1942, began immediately to issue orders pursuant to Executive Order 9066.

These orders included Public Proclamation No. 3, ordering all persons of Japanese ancestry, both aliens and Japanese-American citizens, within certain military areas, to remain in their homes between the hours of 8 p.m. and 6 a.m. This is referred to as the "curfew order."

DeWitt also issued a series of "exclusion orders," ordering all persons of Japanese ancestry to leave their homes and report to assembly centers..

Gordon Hirabayashi was a student at the University of Washington in the spring of 1942, when the curfew and exclusion orders were issued. Gordon had been born in Seattle, and attended public schools in King County, where he was a Boy Scout. Later, at the University, Gordon was active in the YMCA and the Society of Friends, or Quakers. Gordon's parents were both born in Japan and came to the U.S. as teenagers.

Gordon decided to defy the orders, because:

> "It was my feeling at that time, that having been born here and educated and having the culture of an American citizen, that I should be given the privileges of a citizen—that a citizen should not be denied such privileges because of his descent. I expressed my thoughts that I had a right to stay."

Gordon turned himself in to the FBI on May 16, 1942, and was placed in the King County Jail, where he remained until his trial.

EXECUTIVE ORDER

- - - - - - - -

AUTHORIZING THE SECRETARY OF WAR TO PRESCRIBE MILITARY AREAS

WHEREAS the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U. S. C., Title 50, Sec. 104):

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military

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Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore granted under Executive Order No. 8972, dated December 12, 1941, nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

Franklin D Roosevelt

THE WHITE HOUSE,

February 19, 1942.

THE NATIONAL ARCHIVES
FILED AND MADE AVAILABLE
FOR PUBLIC INSPECTION
FEB 21 12 51 PM '42
IN THE DIVISION OF THE
FEDERAL REGISTER

9066

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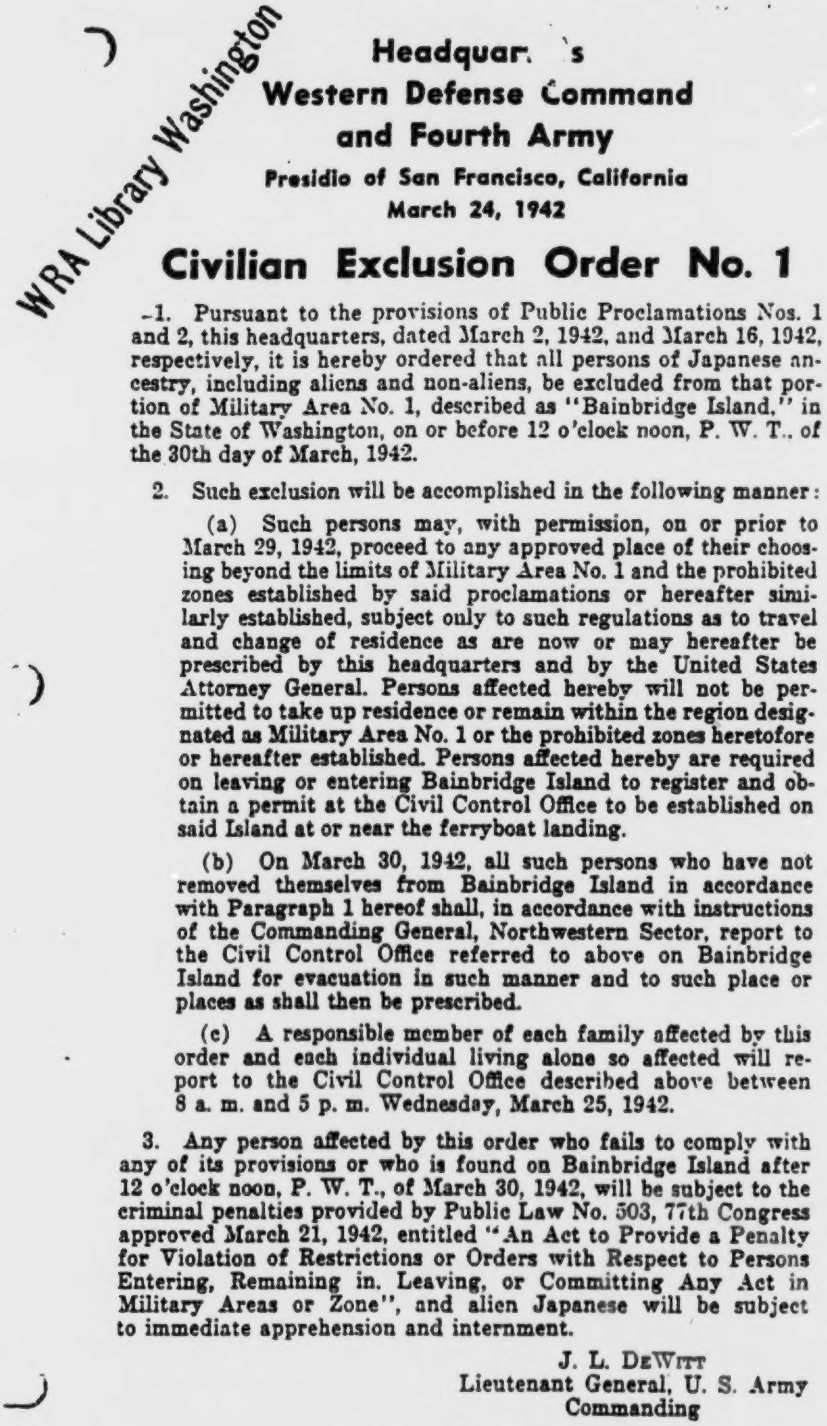

WRA Library Washington

Headquarters
Western Defense Command
and Fourth Army
Presidio of San Francisco, California
March 24, 1942

Civilian Exclusion Order No. 1

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that all persons of Japanese ancestry, including aliens and non-aliens, be excluded from that portion of Military Area No. 1, described as "Bainbridge Island," in the State of Washington, on or before 12 o'clock noon, P. W. T., of the 30th day of March, 1942.

2. Such exclusion will be accomplished in the following manner:

(a) Such persons may, with permission, on or prior to March 29, 1942, proceed to any approved place of their choosing beyond the limits of Military Area No. 1 and the prohibited zones established by said proclamations or hereafter similarly established, subject only to such regulations as to travel and change of residence as are now or may hereafter be prescribed by this headquarters and by the United States Attorney General. Persons affected hereby will not be permitted to take up residence or remain within the region designated as Military Area No. 1 or the prohibited zones heretofore or hereafter established. Persons affected hereby are required on leaving or entering Bainbridge Island to register and obtain a permit at the Civil Control Office to be established on said Island at or near the ferryboat landing.

(b) On March 30, 1942, all such persons who have not removed themselves from Bainbridge Island in accordance with Paragraph 1 hereof shall, in accordance with instructions of the Commanding General, Northwestern Sector, report to the Civil Control Office referred to above on Bainbridge Island for evacuation in such manner and to such place or places as shall then be prescribed.

(c) A responsible member of each family affected by this order and each individual living alone so affected will report to the Civil Control Office described above between 8 a. m. and 5 p. m. Wednesday, March 25, 1942.

3. Any person affected by this order who fails to comply with any of its provisions or who is found on Bainbridge Island after 12 o'clock noon, P. W. T., of March 30, 1942, will be subject to the criminal penalties provided by Public Law No. 503, 77th Congress approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving, or Committing Any Act in Military Areas or Zone", and alien Japanese will be subject to immediate apprehension and internment.

J. L. DeWitt
Lieutenant General, U. S. Army
Commanding

Headquarters
Western Defense Command
and Fourth Army

Presidio of San Francisco, California

- - -

Public Proclamation No. 3

- - -

March 24, 1942

TO: The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally:

Whereas, By Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2 and Zones thereof, and

Whereas, By Public Proclamation No. 2, dated March 16, 1942, this headquarters, there were designated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

Whereas, The present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof:

Now, Therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned:

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones

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established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P. M. and 6:00 A. M., which period is hereinafter referred to as the hours of curfew.

2. At all other times all such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than five miles from their place of residence.

3. Nothing in paragraph 2 shall be construed to prohibit any of the above specified persons from visiting the nearest United States Post Office, United States Employment Service Office, or office operated or maintained by the Wartime Civil Control Administration, for the purpose of transacting any business or the making of any arrangements reasonably necessary to accomplish evacuation; nor be construed to prohibit travel under duly issued change of residence notice and travel permit provided for in paragraph 5 of Public Proclamations Numbers 1 and 2. Travel performed in change of residence to a place outside the prohibited and restricted areas may be performed without regard to curfew hours.

4. Any person violating these regulations will be subject to immediate exclusion from the Military Areas and Zones specified in paragraph 1 and to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zone." In the case of any alien enemy, such person will in addition be subject to immediate apprehension and internment.

5. By subsequent proclamation or order there will be prescribed those classes of persons who will be entitled to apply for exemptions from exclusion orders hereafter to be issued. Persons granted such exemption will likewise and at the same time also be exempted from the operation of the curfew regulations of this proclamation.

6. After March 31, 1942, no person of Japanese ancestry shall have in his possession or use or operate at any time or place within any of the Military Areas 1 to 6 inclusive, as established and defined in Public Proclamations Nos. 1 and 2, above mentioned any of the following items:

(a) Firearms.
(b) Weapons or implements of war or component parts thereof.
(c) Ammunition.
(d) Bombs.
(e) Explosives or the component parts thereof.
(f) Short-wave radio receiving sets having a frequency of 1,750 kilocycles or greater or of 540 kilocycles or less.
(g) Radio transmitting sets.
(h) Signal devices.
(i) Codes or ciphers.
(j) Cameras.

Any such person found in possession of any of the above named items in violation of the foregoing will be subject to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zone."

7. The regulations herein prescribed with reference to the observance of curfew hours by enemy aliens, are substituted for and supersede the regulations of the United States Attorney General heretofore in force in certain limited areas. All curfew exemptions heretofore granted by the United States Attorneys are hereby revoked effective as of 6:00 a. m., PWT, March 27, 1942.

8. The Federal Bureau of Investigation is designated as the agency to enforce the foregoing provisions. It is requested that the civil police within the states affected by this Proclamation assist the Federal Bureau of Investigation by reporting to it the names and addresses of all persons believed to have violated these regulations.

J. L. DeWitt
Lieutenant General, U. S. Army
Commanding

CR #4205
Comm #8652
Bail \$ 5000^{00}

Jail

United States District Court

Western District of Washington
Northern Division

MAY Term, 19 42

UNITED STATES OF AMERICA,
Plaintiff,
vs.
GORDON KIYOSHI HIRABAYASHI
Defendant

No. 45738

INDICTMENT

United States of America
WESTERN DISTRICT OF WASHINGTON
Northern Division
} *ss:*

Vio. Pub. Law #503, Curfew Act
Vio. Civilian Exclusion Order No. 57.

The grand jurors of the United States of America being duly selected, impaneled, sworn, and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

BEST COPY AVAILABLE

COUNT I

That GORDON KIYOSHI HIRABAYASHI, being a person of Japanese ancestry, whose true and full name is to the Grand Jury unknown, on or about the 11th day of May, 1942, and continuing until the date of the return of this indictment, at the City of Seattle, Northern Division of the Western District of Washington, and within the jurisdiction of this Court then and there residing and being within the geographical limits of Military Area No. 1, as such area is defined and described in Public Proclamations Nos. 1 and 2, issued by J. L. De Witt as Lieutenant General of the United States Army and as the Military Commander of the Western Defense Command, Fourth Army, and so designated by the Secretary of War, pursuant to the Executive Order below described, did then and there commit an act in said military area contrary to the military orders applicable to said military area, to-wit: contrary to the restrictions of Civilian Exclusion Order No. 57, dated May 10, 1942, issued by the said Military Commander pursuant to Executive Order No. 9066, issued by the President of the United States on February 19, 1942, in that during all of the times above mentioned the said GORDON KIYOSHI HIRABAYASHI, being an individual living alone within the area prescribed by said Civilian Exclusion Order No. 57, he, the said GORDON KIYOSHI HIRABAYASHI, did then and there fail and neglect to report to the Civil Control Station located at Christian Youth Center, 2203 East Madison Street, Seattle, Washington, on Monday, May 11, 1942, between the hours of 8:00 o'clock A.M. and 5:00 o'clock P.M., or at all, and did fail to report to said Civil Control Station on May 12, 1942, between the hours of 8:00 o'clock A.M. and 5:00 o'clock

P.M., or at all, contrary to directions of said Civilian Exclusion Order No. 57, when the said GORDON KIYOSHI HIRABAYASHI knew and should have known of the existence and extent of the said orders and order and that the said acts above set forth were in violation of said orders; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II

That on or about May 4, 1942, GORDON KIYOSHI HIRABAYASHI, being a person of Japanese ancestry, and then and there residing and being within the geographical limits of Military Area No. 1, as such area is defined and described in Public Proclamation No. 1, duly issued by J. L. De Witt, Lieutenant General of the United States Army and designated as Military Commander of the Western Defense Command, Fourth Army, by the Secretary of War, pursuant to the Executive Order below described, did then and there commit an act within said military area and contrary to the restrictions applicable within said Military Area No. 1, which act was contrary to the restrictions of Public Proclamation No. 3, issued March 24, 1942, by the aforesaid Military Commander, pursuant to Executive Order No. 9066, issued by the President of the United States on February 19, 1942, in that the said GORDON KIYOSHI HIRABAYASHI failed to obey paragraph No. 1 of said Public Proclamation No. 3, which provides as follows:

> "1. From and after 6:00 o'clock A.M., March 27, 1942, * * * all persons of Japanese ancestry residing or being within the geographical limits of Military Area Number 1 * * * shall be within their place of residence between the hours of 8:00 o'clock P.M. and 6:00 o'clock A.M., which period is hereinafter referred to as the hours of curfew,"

in that the said GORDON KIYOSHI HIRABAYASHI was not within his place of residence at Seattle, Washington, between the hours of 8:00 o'clock P.M. and 6:00 o'clock A.M., on or about May 4, 1942, when he, the said GORDON KIYOSHI HIRABAYASHI, knew or should have known of the existence and extent of said restrictions and order and that his act was in violation thereof; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. Charles Dennis
United States Attorney

Allan Pomeroy
Assistant United States Attorney

LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Japanese American Internment

Lesson 4

Objectives
Students will:

- Explain the purpose of a closing argument to a jury in a trial.
- Formulate closing arguments to the jury, using original documents from Hirabayashi's trial, including proposed jury instructions.
- Analyze and weigh arguments.

Materials
Copies of handouts:

- Trial Summary
- Jury Instructions
- Questions for Judges

Time Required
2 to 3 class periods.

Note: Students may be reluctant to take the government's side in making arguments to the court. One way to deal with this is to present the scenario as a play, that they are reenacting to better understand how the cases were decided, and how the court came to its decisions. They are playing the roles of the lawyers and don't necessarily have to agree with the arguments made.

Procedures
■ **Pass out** the summary of the testimony at the trial. Ask students, working in groups of 3 to 5, to review the indictment and testimony, and decide:

Did the defendant violate the orders?

Was his refusal to comply justified?

Give students 10 to 15 minutes to work. Then reconvene the class and ask:

- **What does** the government need to prove to win its case?

  Count I: To win its case for violation of the exclusion order, the government must show that Gordon Hirabayashi did not report to the Civilian Control Station on May 11, 1942 or May 12, 1942.

  Count II: To win its case for violation of the curfew order, the government must prove that he violated the curfew, by staying out between 8 p.m. and 6 a.m.

- **What is** the defendant's position?

  The defendant argues that he is a loyal American citizen, and that his constitutional rights were violated by the issuance of the orders. (Although he does not specifically state which rights, it would be his 5th amendment right to due process.) He states that the orders discriminate against him because he is of Japanese ancestry.

Note: The equal protection clause of the 14th amendment is the amendment used today in discrimination cases (along with many specific laws that prohibit discrimination). The fourteenth amendment (1868) provides in part:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor *deny to any person within its jurisdiction the equal protection of the laws*."

As you can see, the 14th amendment, as written, only applied to actions by the *states*, not the federal government, which was the party involved in the Japanese American internment cases. The fifth amendment governs actions by the federal government. The fifth amendment, however, does not include an "equal protection" clause. It was only later that the Supreme Court ruled that the "equal protection" clause applied to the federal government.

At the time of Hirabayashi's trial the 14th amendment's "equal protection" clause had not yet been formally "incorporated" into the 5th amendment, and therefore was not applicable to the federal government. Hirabayashi's lawyer made some of these arguments to the judge anyway.

- **What facts** are important to prove each side's position?

  The government must prove that the defendant didn't report to the Center, and that he was out past the curfew time.

  Hirabayashi must prove that the orders violate the fifth amendment's due process clause. He must show that he was ordered to report and comply with the curfew only because he was of Japanese ancestry, and not because he was disloyal or suspected of espionage or spying.

■ **Tell students** that they will now make closing arguments to the jury in the Hirabayashi case. Review briefly the steps in a trial and the purpose of a closing argument and jury instructions:

At the beginning of a trial, the attorneys for both sides make opening statements to the jury to introduce the case. Then the witnesses testify. At the end, the attorneys make final closing arguments.

The purpose of the closing argument is to review the testimony as given by the witnesses, show what facts support the attorney's side of the case, and convince the jury that his or her side should win.

Before the closing arguments, both sides prepare a version of jury instructions they would like for the judge to use, present them to the judge, and the judge decides which instructions are appropriate. The instructions tell the jury what law they are to apply to the case.

Jury instructions are read by the judge to the jury after the closing arguments by the attorneys for both sides in Federal court. [In state court in Washington, the instructions are read before the closing arguments.] The instructions tell the jury what law they are to apply to the facts in the case.

> **Note:** At the Hirabayashi trial, the judge actually refused to use any of the instructions proposed by the defendant. They are being used here, however, as a method to present what the defendant's arguments were, and, in fact, some of these arguments were made to the jury at the trial despite the judge's ruling. (See Irons, *Justice at War*, p. 157-59.)

■ **Divide the class** into two groups. One will represent the government and the other will represent the defendant. Pass out the Proposed Instructions and the summaries of the Instructions, to each side. (The summaries are simplified versions of the Jury Instructions.)

■ **Tell students** that, working in groups of 4 to 5, they are to prepare a closing argument for their side of no more than five minutes, using the Proposed Jury Instructions and the summaries for their side, the witnesses' testimony as summarized and any other documents provided. One or two students from each group should present the argument. Allow sufficient time for preparation.

■ **Tell students** that in a criminal trial, the government always goes first, as it has the burden of proof, which means that since the defendant is assumed innocent until proven guilty, the government must bear the weight of proving guilt. After the defendant makes a closing argument, the government has the opportunity to make a rebuttal argument, which can be two minutes.

■ **Pair groups** from opposing sides and do the arguments simultaneously. Alternatively, have students make their arguments to panels of judges, who may question the students during or after their arguments. Judges may use the suggested questions in handout "Questions for Judges."

■ **After the arguments**, debrief by asking the following questions:

- What were the strongest arguments for each side?
- How would you decide the case? Why? Should a jury be able to decide a law is unfair and should not be enforced?

■ **Tell students** that in the real case:

The judge instructed the jury that both orders were valid and enforceable, and that they were to find as matters of fact that Hirabayashi was of Japanese ancestry and therefore subject to the orders, that he had violated the curfew, and that he failed to report for evacuation. Based on these findings, the judge instructed the jury to find Hirabayashi guilty! The jury returned in 10 minutes with a finding of guilty on both counts.

At sentencing the next day, the judge took the five months that Hirabayashi had already spent in the King County Jail into account, and sentenced him to 30 days on each count, to be served consecutively. Gordon then asked if he could serve a longer sentence—90 days—because he had found that if his sentence were at least 90 days, he would be allowed to serve the sentence outside a prison, in a road camp. The judge agreed, and changed the sentence to 90 days for each count, to be served concurrently (at the same time). Hirabayashi and his lawyers agreed, not realizing that the U.S. Supreme Court would use the concurrent sentences to avoid ruling on the constitutionality of the exclusion order, and rule only on the curfew order, considered to be less burdensome, and therefore more "justifiable." [See Irons, *Justice at War.*] This will be discussed more fully later.

■ **Tell students** that Hirabayashi appealed his conviction, and it was heard by the U.S. Supreme Court in 1942. Three other cases challenging the internment were also heard by the Supreme Court. Tell them they will now hold a re-enactment of the arguments in these cases at the U.S. Supreme Court.

Trial Summary

The case was tried on October 20, 1942, before a jury and Judge Lloyd L. Black, in Seattle, Washington. The witnesses were as follows:

Government's Witnesses

Shunto Hirabayashi testified that he and his wife were born in Japan, and that they were the parents of Gordon Hirabayashi. He also testified that he was converted to the Christian religion before coming to the U.S., and that neither he nor his wife had ever been back to Japan, and neither had had any connection with the empire of Japan since coming to this country.

Tom G. Rathbone, head of the Civil Control Station, testified that the defendant did not report to the Civil Control Station on May 11, 1942 or May 12, 1942. Rathbone testified that the defendant did voluntarily turn himself in on May 16, 1942, and admitted that he knew of the orders to report, but refused to do so because he believed the orders were unconstitutional and deprived him, as a native born American citizen, of his rights under the Constitution.

H.H. McKee, Special Agent of the FBI, testified that the defendant voluntarily came to his office and stated that he could not obey the orders because he believed them unlawful.

Floyd Schmoe, a Quaker activist and father of Gordon's fiancee, testified that, on the evening of May 9, 1942, the defendant left his residence after the hour of 8:00 p.m. Mr. Schmoe also testified that the defendant had said that he believed that the orders were unconstitutional, and to obey them would be waiving his rights as an American citizen.

Three other government witnesses corroborated the testimony that the defendant had stated that he could not voluntarily obey the orders because they were unconstitutional.

Defendant's Witnesses

Gordon Hirabayashi testified in his own behalf. He testified that he was born in Seattle, King County, Washington April 23, 1918, and was educated in the public schools of King County. He was a senior at the University of Washington, majoring in mathematics at the time of his incarceration in the

King County Jail. He also stated that he had never been to Japan nor had any connection with the Japanese government, nor corresponded with any person in Japan. He testified that his parents had always taught him and his brothers and sisters that they are American citizens and how to conduct themselves as such; that he had been active in the Boy Scout movement, having been a life scout in a troop of Japanese American boys and assistant scout master; that he was active in the YMCA at the University, and had represented the University YMCA at conferences in other states; that he had learned what is expected of good American citizens, and what his rights are as an American citizen; that he had at all times tried to conduct himself as one; and that he had never been arrested.

Gordon further testified that he had not reported to the Civil Control Center, and had not remained within his residence during the curfew hours because he honestly believed that the evacuation and curfew orders were and are unconstitutional and violated his rights as an American citizen; that he believed that the orders discriminated against him and other American citizens of Japanese ancestry on the basis of race and color, which he had been taught to believe is against one of the fundamental principles upon which our government is founded; and that he believed it to be his right and duty as an American citizen to defend this action in order that the constitutional questions involved could be determined in a court of law.

M.D. Woodbury testified on behalf of the defendant that he had known Gordon for three years and that he had at all times conducted himself as a law abiding American citizen, and was well respected among his fellow students and the community.

Excerpt from Fifth Amendment of the U.S. Constitution:

"No person shall be ... deprived of life, liberty, or property, without due process of law ...."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

- - - - - - - - -

UNITED STATES OF AMERICA,)
Plaintiff,) No. 45738
- vs -)
GORDON KIYOSHI HIRABAYASHI,)
Defendant.)

- - - - - - - - -

GOVERNMENT'S REQUESTED INSTRUCTIONS

Comes now the United States of America, plaintiff herein, and respectfully requests this Honorable Court to make the following instructions in the above entitled cause.

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION
[illegible] 1942
JUDSON W. [illegible]
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INSTRUCTION NO. ____

The indictment involved in this action in Count I charges the defendant, who is alleged to be a person of Japanese ancestry, with violating Civilian Exclusion Order No. 57, by failing to report to the Civilian Control Station.

In Count II the indictment charges said defendant with violating the curfew provisions of Public Proclamation No. 3 issued by the Military Commander of the Western Defense Command.

On December 8, 1941, Congress, in joint resolution, declared a state of war to be existing between Japan and the Government and people of the United States.

On February 19, 1942, the President signed an Executive Order in which the Secretary of War and military commanders designated by him, were authorized and directed, whenever such action was necessary

> " * * * to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion * * *."

On February 20, 1942 the Secretary of War designated Lieutenant General DeWitt to carry out the duties and responsibilities imposed by the said Executive Order for the particular district involved in this action.

On March 2, 1942 Lieutenant General DeWitt declared the Pacific Coast of the United States to be, because of its geographical location

> " * * * particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations."

On March 21, 1942 Public Law No. 503, enacted by Congress, became effective. The portion material to this action reads as follows:

> " * * * whoever shall * * * leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive Order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor * * *."

I instruct you as a matter of law that the foregoing regulations were valid regulations, and the laws under which they were promulgated are valid and enforceable laws.

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INSTRUCTION NO.

As far as Count I of the indictment is concerned, you are concerned with the following:

(1) Was the defendant Gordon Kiyoshi Hirabayashi of Japanese ancestry.

(2) Did he on May 11, 1942 fail and neglect to report to the Civil Control Station located at the Christian Youth Center, 2203 East Madison Street, Seattle, Washington, between the hours of eight o'clock A.M. and five o'clock P.M., or at all.

(3) Did he on May 12, 1942, between the hours of eight o'clock A.M. and five o'clock P.M., or at all, fail to report to the Civil Control Station located at the Christian Youth Center, 2203 East Madison Street, Seattle, Washington.

(4) Did he know of the existence of the orders to report.

If you find from the evidence, beyond a reasonable doubt, that the defendant herein was a person of Japanese ancestry, that he either knew or should have known of the existence and extent of the orders requiring him to report on either May 11, 1942, or May 12, 1942, and you further find from the evidence, beyond a reasonable doubt, that he failed to so report, then, in that event, you are instructed to return a verdict of guilty as to Count I of the indictment.

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INSTRUCTION NO.

As to Count II, the indictment charges that the defendant Gordon Kiyoshi Hirabayashi failed to obey Paragraph No. 1 of Public Proclamation No. 3, which provides as follows:

> "1. From and after 6:00 A.M., March 27, 1942, * * * * all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, * * * * * shall be within their place of residence between the hours of 8:00 P.M. and 6:00 A.M., which period is hereinafter referred to as the hours of curfew."

I hereby instruct you that the City of Seattle on May 4, 1942, and at all times since said date, was within the geographical limits of Military Area No. 1.

I further instruct you that if you find from the evidence, beyond a reasonable doubt, the following facts: (1) that the defendant herein, Gordon Kiyoshi Hirabayashi, was of Japanese ancestry; (2) that he either knew or should have known of the curfew regulations; (3) that on or about May 4, 1942 the said defendant failed to obey said curfew regulations in the manner following, that is to say: he was not within his place of residence at Seattle, Washington, between the hours of eight o'clock P.M. and six o'clock A.M., then your verdict should be guilty as to Count II.

INSTRUCTION NO. ______

I further instruct you that it is not necessary that the Government prove that the offense herein was committed on the exact date set forth in the indictment. If you find from the evidence, beyond a reasonable doubt, that the defendant herein committed the offense charged at any time between May 4, 1942 and May 28, 1942, then, in that event, you should bring in a verdict of guilty.

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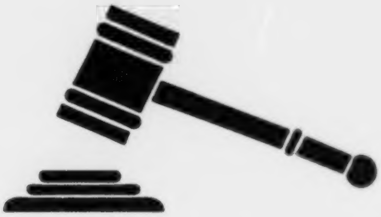
Jury Instructions



United States of America,
— vs. —
Gordon Kiyoshi Hirabayashi

Government's Requested Jury Instructions— Arguments for Counsel

Summary

The Defendant is charged with breaking two laws, or "counts" — (1) failing to report to the Civilian Control Station for exclusion (Count I); and (2) violating the curfew order (Count II).

Background of the case as presented by the government:

- On December 8, 1941 Congress declared war against Japan.
- On February 19, 1942, President Roosevelt signed Executive Order 9066, which authorized military commanders to define military areas from which certain persons could be excluded.
- On March 2, 1942, Lieutenant General DeWitt declared the Pacific coast of the U.S. to be subject to attack by the Japanese, and subject to acts of espionage.
- On March 21, 1942 Congress passed Public Law 503, making it a misdemeanor (a crime punishable by less than one year in jail) to violate any of the orders of Lieutenant General DeWitt.
- Therefore, the nation is in *extreme danger* and must protect itself from spying and espionage by the enemy and its agents. This is an emergency situation. These measures are required by *military necessity*.

Count I: The issues the jury must decide:

1. Was Gordon Kiyoshi Hirabayashi of Japanese ancestry?
2. Did he fail to report to the Civilian Control Station on May 11, 1942 or May 12, 1942?

3. Did he know that the orders he violated had been issued?

If the answer to all of these questions is yes, then the jury must find Gordon Kiyoshi Hirabayashi guilty of Count I.

Count II: The jury must decide:

1. Was Gordon Kiyoshi Hirabayashi of Japanese ancestry?
2. Did he know about the curfew order?
3. Was he out of his home between the hours of 8 p.m. and 6 a.m. on May 4, 1942?

If the answer to all of these questions is yes, then the jury must find Gordon Kiyoshi Hirabayashi guilty of Count II.

In planning your argument, first focus on the national emergency argument—that the nation is in danger of invasion by the enemy, and must protect itself from spying and espionage by enemy agents.

Then, address each Count in the Indictment. Consider: What testimony was given at the trial to prove each part of Count I?

For example: Was Hirabayashi of Japanese ancestry?

Who testified about this?—His father, and Gordon Hirabayashi himself.

Did he fail to report?

Who testified about this?

Did he know the order had been issued?

Who testified about this?

Continue for Count II.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff
v.
GORDON KIYOSHI HIRABAYASHI,
Defendant

No. 45738

PROPOSED INSTRUCTIONS OF THE DEFENDANT

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION
OCT 20 1942
JUDSON W. SHORETT, Clerk
By Deputy

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INSTRUCTION NO._____

You are instructed that Executive Order No. 9066 of the President and Civilian Exclusion Order No. 57 and Public Proclamation No. 3 of the Military Commander were issued for the purpose of protecting our national defense materials, national defense premises, and national defense utilities against acts of espionage or sabotage.

You are further instructed that before any person could or can be excluded from any military area prescribed by the Military Commander or interned or compelled to obey any curfew regulations prescribed by a military commander, such person must first have been charged with engaging in or commiting acts of espionage or sabotage of our national defense materials, premises or utilities; that he must have been given a hearing on such charges before an impartial tribunal where he could defend himself against the charges, have legal counsel to assist him and could produce witnesses on his own behalf; that after such hearing he must have been found guilty of the charge or charges against him; and that without such a hearing on such charges and his conviction thereof he would be under no duty to report to the Civil Control Station described in Count I of the indictment, nor to obey the curfew regulations described in Count II of the indictment.

Therefore, unless you find from the evidence at this trial that the defendant here was so charged with engaging in espionage or sabotage of our national defense materials, premises or utilities and after a hearing on such charges was convicted thereof, you can not find the defendant guilty under either count of the indictment.

INSTRUCTION NO._____

You are instructed that under a statute enacted by the Congress of the United States, alien enemies are defined as the "natives, citizens, denizens or subjects of the hostile nation or government" which has been declared by the President to be at war with the United States.

You are further instfucted that the law presumes that such an alien enemy as above defined will commit acts of espionage or sabotage against the United States, and on the basis of such presumption such an alien enemy can be temporarily restricted in his liberty of movement, or can be temporarily excluded from a military area, or can be temporarily compelled to obey curfew or other regulations relative to his movements and conduct; but that before such restriction of liberty, exclusion from a military area or obedience to such regulations could be made permanent, such alien enemy would first have to be charged with the commission of some act or acts of espionage or sabotage against the United States and have been granted a hearing before an impartial tribunal where he could defend himself against such charges, and must have been found guilty of the act or acts charged.

But you are further instructed that as to citizens of the United States of America no such presumption as above described exists either in law or in fact, and that before any citizen of the United States of America can be temporarily or permanently excluded from a military area or compelled to obey curfew or other regulations or have his liberty of movement restricted, he must first have been charged with some act or acts of espionage or sabotage against the United States, have been granted a hearing on such charges before an impartial tribunal, and have been found guilty of the acts charged.

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You are further instructed that the above protection accorded a United States citizen is guaranteed to him by the Constitution of the United States of America, and no discrimination can be made against him in that protection because of his race or color.

You are further instructed that the evidence at this trial proves in this case that the defendant here is a native born citizen of the United States of America, of Japanese ancestry, and that as such he is entitled to the above described constitutional protection regardless of his race, color or ancestry.

Therefore, unless you further find from the evidence here that the defendant was charged with an act or acts of espionage or sabotage against the United States, was granted a hearing on such charges where he was permitted to defend himself, and was found guilty of the act or acts charged, then I instruct you that the defendant owed no duty to obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the Military Commander, and you must find the defendant not guilty under either count of the indictment.

You are further instructed that the above protection accorded a United States citizen is guaranteed to him by the Constitution of the United States of America, and no discrimination can be made against him in that protection because of his race or color.

You are further instructed that the evidence at this trial proves in this case that the defendant here is a native born citizen of the United States of America, of Japanese ancestry, and that as such he is entitled to the above described constitutional protection regardless of his race, color or ancestry.

Therefore, unless you further find from the evidence here that the defendant was charged with an act or acts of espionage or sabotage against the United States, was granted a hearing on such charges where he was permitted to defend himself, and was found guilty of the act or acts charged, then I instruct you that the defendant owed no duty to obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the Military Commander, and you must find the defendant not guilty under either count of the indictment.

You are further instructed that the above protection accorded a United States citizen is guaranteed to him by the Constitution of the United States of America, and no discrimination can be made against him in that protection because of his race or color.

You are further instructed that the evidence at this trial proves in this case that the defendant here is a native born citizen of the United States of America, of Japanese ancestry, and that as such he is entitled to the above described constitutional protection regardless of his race, color or ancestry.

Therefore, unless you further find from the evidence here that the defendant was charged with an act or acts of espionage or sabotage against the United States, was granted a hearing on such charges where he was permitted to defend himself, and was found guilty of the act or acts charged, then I instruct you that the defendant owed no duty to obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the Military Commander, and you must find the defendant not guilty under either count of the indictment.

INSTRUCTION NO.______

You are instructed that the Congress of the United States of America alone has the power to declare martial law in or over any portion of the United States, and that this power can not be delegated to the President or the Secretary of War or to any military commander designated by him.

You are further instructed that in the present emergency military law has not been declared by the Congress in or over any portion of the United States.

You are further instructed that the existence of a state of war between the United States and a foreign country does not suspend the rights guaranteed by the Constitution that no person can be deprived of his life, liberty or property without due process of law. Such due process of law includes the right of a person to have a public hearing after he has been informed of the nature and cause of the accusation against him and his right to defend against such accusation, have counsel to assist in his defense, and to compel witnesses to testify on his behalf.

You are further instructed that unless you find from the evidence here that the defendant was accused of some unlawful act against the United States, was granted a hearing on such accusation where he was allowed to defend himself, and was found guilty of what he was accused, then I instruct you that the defendant was under no duty to obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the Military Commander, and you must find the defendant not guilty.

Jury Instructions

United States of America,
— vs. —
Gordon Kiyoshi Hirabayashi

Defendant's Requested Jury Instructions—Arguments for Counsel

Summary

The Defendant asks the Judge to tell the jury:

1. President Roosevelt and the military commander DeWitt issued the exclusion and curfew orders in order to protect the United States from acts of espionage (spying by agents of the Japanese government).

   Before a person can be excluded from the west coast or required to obey the curfew order, that person must first have been charged with committing some actual act of espionage or spying; and be allowed to defend him or herself from those charges.

   Unless you find that the defendant was charged with some act of espionage, you cannot find him guilty of either Count I or Count II.

2. The defendant is a native-born citizen of the United States, of Japanese ancestry, and is entitled to the protection of the U.S. Constitution and the due process of the law. Due process entitles him to:

   (a) a public hearing after being informed of the charges against him,

   (b) the right to defend himself against the charges,

   (c) the right to have a lawyer help him in his defense, and

   (d) the right to have witnesses testify in his behalf.

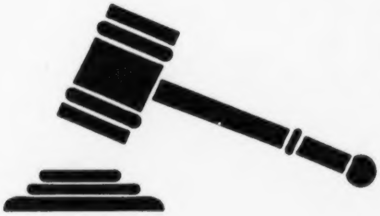
   Unless you find that the defendant received due process of law, you must find that he was not required to comply with the military orders, and you must find him not guilty of Count I or Count II.

3. Further, the U.S. Constitution guarantees the equal protection of the laws to all U.S. citizens, regardless of race or color. The military orders discriminate against Japanese Americans as a class of people, rather than looking at each individual and whether or not they are guilty of spying.

   There is no evidence that Gordon Hirabayashi is guilty of spying.

   No discrimination can be made against the defendant solely because of his race or color. There must be proof that he is guilty of spying.

Questions for Judges



United States of America,
— vs —
Gordon Kiyoshi Hirabayashi

Suggested Questions for Judges

Possible questions to ask the Government's attorney(s). Try to think of at least two additional questions.

1. This defendant (Gordon Hirabayashi) is a well-respected young man, isn't he? Is there any evidence that he has had contact with the Japanese government?
2. Has he ever visited Japan?
3. Do you have any evidence that this defendant (Gordon Hirabayashi) is guilty of spying?
4. Why should I find him guilty?
5.
6.

Questions for the Defendant's attorney(s):

1. The defendant violated the law by not reporting to the Center, didn't he? Why shouldn't I find him guilty?
2. The defendant was out after the curfew, wasn't he? Why shouldn't I find him guilty?
3. There is a national emergency, our nation is at war. Don't we have to sacrifice the rights of a few people to protect the entire nation from attack?
4.
5.

LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Japanese American Internment

Lesson 5

Objectives

- Students will understand the political climate surrounding the U.S. Supreme Court in 1943.
- Students will research the identity of the members of the Supreme Court at the time the internment cases were decided.
- Students will develop arguments for each side in the internment cases.

Note: Again, students may be reluctant to take the Government's side in making arguments to the Court. One way to deal with this is to present the scenario as a play, that they are reenacting to better understand how the cases were decided, and how the Court came to its decisions. They are playing the roles of the lawyers, and don't necessarily have to agree with the arguments made. Students may even wish to use the actual names of the lawyers who were involved in the cases.

Also, as you will note, all of the attorneys and Justices were men. You might discuss with your class that while there were women attorneys and judges in the 1940s, there were very few. Sandra Day O'Connor is the first woman on the U.S. Supreme Court, and she was not appointed until the 1980s. Ruth Bader Ginsburg, nominated by President Clinton, was confirmed by the Senate on August 3, 1993, and joins the Court as the second woman Justice. Encourage female students to play the roles of these men.

Materials

Copies of handouts:

- Supreme Court under Roosevelt
- Members of Court
- Instructions for Justices
- Facts of the Cases
- Instructions for Defense Attorneys
- Instructions for Government Attorneys

Time Required

2 to 3 class periods.

Procedures

■ **Begin by asking** students what they know about the U.S. Supreme Court.

Points to bring out include that this is the highest court in the United States, and the only one specifically mentioned in the Constitution. Refer students to Article III of the Constitution. Section 2 states that the Supreme Court only hears certain types of cases. For the Court to hear a case, it must involve an issue that requires an interpretation of the Constitution, a treaty, or a federal law. The Court can also hear certain other types of cases, as listed in Section 2: for example, cases between citizens of different states, cases involving ambassadors, and admiralty and maritime cases. There are nine Justices; they are appointed by the President and must be approved by the Senate. The Justices serve for life during "good behavior."

■ **Ask students** why the Justices are allowed to serve for life? (So that once appointed, they will be independent from politics.) You might discuss some recent appointments to the Court. Has politics played a part? Encourage discussion of the fact that these judges are just people and have their own lives and personal biases that probably play a part in their decision-making.

■ **As background** for the arguments in this case, it is helpful for students to understand how much influence President Roosevelt had on the Court in the early 1940s. Ask students to read about Roosevelt's "Court packing" plan, in the handout "The Supreme Court Under Roosevelt." You might also ask some students to do additional research on this topic and report to the rest of the class about it. Essential information is included in the handout. Check for understanding by asking questions such as: Why did Roosevelt want to add members to the Court? Did the plan work? How much influence did Roosevelt end up having on the Court?

■ Pass out the list of Justices on the Court when the cases were argued and decided—some information is given about each Justice. Tell students that they will be conducting a mock appellate argument before the Court. Nine of them will play the roles of the nine Justices, and behave as they think their Justice would have acted during the arguments. To do this, those playing these roles should do additional research to learn more about their Justice. Those playing attorneys should also learn about the make-up of the Court, in order to decide how best to frame their arguments.

■ **Roles for the appellate** argument include attorneys for each side and the nine Justices. When these cases were actually argued, attorneys for three Japanese Americans were present, for three separate cases. The three defendants were Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu. [Korematsu's case was argued both in 1943 and again in 1944. In 1943, the Court was only considering a procedural point in the Korematsu case. It was the 1944 hearing that led to the full opinion deciding the case. For purposes of this activity, we will take all three cases together, and argue them all fully.]

In order to include more students, we will be arguing all three cases. For example, we will have two or three students representing Gordon Hirabayashi and two or three students representing the government in Hirabayashi's case. Two or three students will represent Minoru Yasui, and two or three students will represent the government in that case, etc. (Depending on how many students you have, you could let one set of government attorneys argue all three cases, but the cases should be argued separately, since the facts are different in each case.)

Of course, if you have a smaller class, you could let students choose just one case to argue. The roles and facts of each case are described in the handouts "Facts of the Cases" and "Instructions for Attorneys."

■ **Decide who** will play the Justices, and give them a copy of "Instructions for Justices" and "Facts of the Cases." Divide the attorneys into groups and give the defendants' attorneys copies of "Instructions for Defense Attorneys" and "Facts of the Cases." Give the government attorneys copies of "Facts of the Cases" and "Instructions for Government Attorneys." Encourage both attorneys and Justices to do additional research, using the bibliography and a law library, if possible. Peter Irons' book *Justice at War* is a helpful reference book.

■ **For higher-level classes**, you may want to give students the excerpts from the *Korematsu* opinion, following Lesson 6. More advanced students could use language and reasoning from the opinion in formulating their arguments. Since this opinion contains both a majority ruling (upholding the internment) and dissenting opinions (finding the internment unconstitutional), students on both sides will find materials for their arguments.

■ **Allow the groups** to meet and prepare their arguments and questions for the next class. (Or give them longer if they are doing additional research.) Explain that the Japanese American defendants are the Petitioners, since they are appealing lower court decisions. The government is the Respondent in each case. The Petitioners will go first in the arguments. Attorneys should brainstorm as a group their best arguments and put them in order, from best to weakest. The Justices should prepare questions as a group to ask the attorneys during oral argument.

■ At the end of class the day before the argument, tell attorney groups to select one or two people to make their argument to the Court.

The Supreme Court Under President Franklin D. Roosevelt

When Democratic President Franklin D. Roosevelt took office in 1933, the country was still in an economic crisis—the Depression. President Roosevelt viewed the situation as a national emergency, and upon taking office had stated that he would exercise "broad executive power to wage a war against the emergency as great as the power that would be given me if we were in fact invaded by a foreign foe."

Roosevelt, working with the democratically controlled Congress, passed many laws to address the economic crisis. The relief programs were called the New Deal. Once the laws had been passed, the only thing standing in the way of their enforcement was the Supreme Court.

In 1933, four members of the Supreme Court were very conservative. Six of the justices had been on the Court since the 1920s or earlier. Between 1935 and 1936, the Court ruled that eight out of ten of Roosevelt's New Deal statutes were unconstitutional. Grounds for striking down the laws were mostly that the President or Congress had acted beyond their authority.

The public began to view the Court as blocking reform efforts. In response, Roosevelt proposed to "reorganize" the judiciary. Roosevelt's proposal was to increase the number of Supreme Court justices to as many as fifteen, creating one seat for each justice who, upon reaching the age of seventy, declined to retire. For every justice age seventy or over the president could appoint another one up to a maximum of six. Roosevelt justified this proposal as a way to relieve the Court's workload.

The plan caused a bitter debate in Congress and the nation. Although Roosevelt had been reelected by an overwhelming margin in 1936, the public did not like the idea of tampering with the Supreme Court. The public viewed the Court as the guardian of the Constitution, independent from politics.

Right after the Court-packing plan was proposed, the Court upheld several important New Deal laws. The Court's change came about when Justice Owen Roberts switched his vote from voting with the conservatives to the supporters of the New Deal. Most observers at the time thought that Roberts' switch was in response to Roosevelt's threat to "pack" the Court.

The proposed changes to the Court were never passed by Congress, but Roosevelt appointed eight justices to the Court between 1937 and 1943, to replace justices who retired. At the time the internment cases were argued, seven of the nine justices were Roosevelt appointees.

From Congressional Quarterly's *Guide to the U.S. Supreme Court* by Elder Witt, D.C.: 1990.

Members of the U.S. Supreme Court in 1942–43

Chief Justice Harlan Fiske Stone. Born in 1872 in New Hampshire, Stone was nominated to the Court by Republican President Calvin Coolidge in 1925. Roosevelt nominated him to be Chief Justice.

Hugo Black. Born in 1886 in Alabama, Black was nominated by President Roosevelt in 1937. Black was a strong supporter of Roosevelt's policies.

William O. Douglas. Born in 1898 in Minnesota, but grew up in Yakima, Washington. Nominated to the Court by Roosevelt in 1939, Douglas was known as a strong supporter of individual rights.

Felix Frankfurter. Born in 1882 in Vienna, Austria, he was nominated to the Court by Roosevelt in 1939. Frankfurter came to the U.S. with his parents in 1894, and was raised in N.Y. He was a founding member of the ACLU, and a close advisor to Roosevelt.

Robert H. Jackson. Born in 1892 in Pennsylvania, Jackson was nominated to the Court by Roosevelt in 1941. He was a close advisor to Roosevelt and supported the Court-packing scheme. He served as the Chief Prosecutor at the Nuremberg war crimes trial in 1945-46.

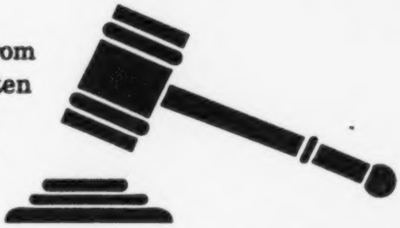
Frank Murphy. Born in 1890 in Michigan, he was nominated to the Court by Roosevelt in 1940. Before his appointment, he served as governor general in the Philippine Islands, and had great respect for the Philippine people. Known as a very liberal justice.

Stanley Reed. Born in 1884 in Kentucky, nominated to the Court in 1938 by Roosevelt.

Owen Roberts. Born in Pennsylvania in 1875, Roberts was nominated to the Court by President Hoover in 1930. He oversaw the investigation into the attack on Pearl Harbor.

Wiley Rutledge. Born in Kentucky in 1894. The newest Roosevelt appointee to the Court at the time of the internment cases, Rutledge took office in February 1943.

Instructions for Supreme Court Justices



When preparing to hear oral arguments from attorneys, Justices review the briefs (written arguments) submitted by the parties, and prepare questions for the attorneys. Since you do not have the briefs, review the facts, and the documents involved. Think about what facts you don't understand, and what questions you want answered before you decide this very important case.

As a group, think of at least five questions to ask the attorneys during their arguments. Questions should fall into these categories:

- At least one question should ask about facts.
- At least one question should ask about the law.
- At least one question should ask about the impact of this decision on future cases.

Everyone should make a list of the questions, which will be turned in at the end of class.

During the arguments, feel free to interrupt whenever you want. That's what the Supreme Court Justices do.

After the attorneys have argued, you will have ten minutes to confer about your decision. The Chief Justice will moderate, making sure that each Justice has an opportunity to speak. One way to assure this is to take a poll, allowing each person to speak in turn. You can then vote. The Chief Justice should announce the decision of the Court. The majority decision will rule.

Facts of the Cases

Hirabayashi v. U.S.

Gordon Hirabayashi was a Japanese American student at the University of Washington when the military orders were issued. He was convicted of violating both the curfew order and the exclusion order in Federal District Court in Seattle in October 1942. He has appealed both convictions. (More detailed description of this case is found earlier in this unit.)

Minoru Yasui v. U.S.

Minoru Yasui was a Japanese-American lawyer living in Portland, Oregon when the military orders were issued. He was born in Hood River, Oregon, was raised as a Methodist, and went to public schools. He attended a Japanese-language school as a boy. At the University of Oregon, he completed military officer training, and was commissioned as a Second Lieutenant in the Army Infantry Reserve. He then attended and graduated from the University of Oregon Law School in 1939.

Unable to find a job as a lawyer after graduation, he found a position as an attache at the Japanese consulate in Chicago. As a requirement of this job, he registered with the State Department as a foreign agent. He resigned from the consulate the day after the bombing of Pearl Harbor, and returned home to report for duty in the U.S. Army. He was told he was unacceptable for service and ordered off the base.

When the first curfew order became effective in Portland, Yasui purposely violated the order and waited to be arrested. After officers refused to arrest him, he finally went to the police station, where he was held for violation of the curfew order.

Korematsu v. U.S.

Fred Korematsu was a Japanese American living in San Leandro, California in May 1942. He was born in Oakland in 1919, and worked as a welder.

Korematsu did not intentionally challenge the military orders. He was seeing an Italian American woman, and they were planning to move east and marry. Korematsu had had plastic surgery in March 1942, before the exclusion orders were issued. As he explained "The operation was for the purpose of changing my appearance so that I would not be subjected to ostracism when my girl and I went East."

When the orders were issued, the rest of Korematsu's family reported to the local assembly center, but Fred did not, hoping to avoid detection and still move east.

After his arrest, Korematsu was visited by an attorney from the ACLU, who asked if he wanted to challenge the exclusion order. Korematsu agreed, saying that the laws were wrong.

Instructions for Defense Attorneys

Appellate Arguments

In your small groups, identify what legal arguments to present to the Supreme Court. Arguments should be no more than seven minutes. If time allows, up to two minutes of rebuttal argument by the Petitioner may be allowed. The order of argument is Petitioner (Defendant-Hirabayashi, Yasui, or Korematsu) first, Respondent (Government) second. Rebuttal only from Petitioner.

Write a clear, brief statement of your position in this case.

Each group should consider what facts it might use to provide support, or prove, its arguments. Consider how those facts support your position.

Some tips on making a legal argument:

1. Begin your argument by stating what your position is and summarizing the basis for that position.
2. Legal conclusions are generally dependent on facts to support them, so include facts in making your arguments.
3. Don't worry about "legalese" in your argument. Figure out what your group wants to "win" in the case, what facts you feel support your goal, and argue accordingly.
4. Remember the time limitations. If you have many points you want to make, you may want to prioritize and emphasize in detail only the most important points.

The attorneys for Gordon Hirabayashi were Frank Walters and Harold Evans.

Yasui was represented by Earl Bernard and Al Wirin.

Korematsu's attorneys were Wayne Collins and Charles Horsky.

Attorneys for each defendant will be relying on many of the same legal arguments. However, each of you should tie those arguments to the facts of your individual case.

Arguments for the defendants include:

1. This man was a loyal citizen of the United States and entitled to equal protection under the laws of the U.S.
2. Congress unconstitutionally delegated its legislative power to the military by authorizing DeWitt to issue the orders.
3. The due process clause of the fifth amendment prohibits discrimination against citizens simply because they are of Japanese descent.
4. Since this man was a loyal citizen, he should be treated as an individual, by his actions, not by his heritage. He was deprived of his life, liberty and property without due process of law.
5. There is not enough evidence to prove that there is a military necessity on the west coast, or that there was not time to hold individual hearings to determine whether these citizens were loyal or not.

Instructions for Government Attorneys

Appellate Arguments

In your small groups, identify what legal arguments to present to the Supreme Court. Arguments should be no more than seven minutes. The order of argument is Petitioner (Defendant—Hirabayashi, Yasui, or Korematsu) first, Respondent (Government) second. Rebuttal only from Petitioner.

Write a clear, brief statement of your position in this case.

Each group should consider what *facts* it might use to provide support, or prove, its arguments. Consider how those facts support your position.

Some tips on making a legal argument:

1. Begin your argument by stating what your position is and summarizing the basis for that position.
2. Legal conclusions are generally dependent on facts to support them, so include facts in making your arguments.
3. Don't worry about "legalese" in your argument. Figure out what your group wants to "win" in the case, what facts you feel support your goal, and argue accordingly.
4. Remember the time limitations. If you have many points you want to make, you may want to prioritize and emphasize in detail only the most important points.

As attorneys representing the U.S. government, and the military commanders who issued and enforced the orders, you will be making similar legal arguments in each case. You should, however, be familiar with the facts of the particular case involved, and tie your legal arguments to the specific facts of the case.

Sample arguments include:

1. Even though the due process clause of the fifth amendment protects citizens against unreasonable government interference, that protection must give way to the "reasonable discretion" of the military in times of war.

2. The defense facilities along the West Coast are critical in the defense of the U.S. Espionage and sabotage are real dangers and must be protected against.
3. Japanese Americans have not become assimilated into society, as evident from the number of Japanese-language schools and number of Japanese who go back to Japan for education.
4. There is not enough time to individually test the loyalty of each Japanese American, so for the safety of all Americans, we must intern all persons of Japanese ancestry.

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Japanese American Internment

Lesson 6

Objectives
Students will:

- Analyze and argue for one side of a case.
- Respond to arguments with counter arguments.
- Develop questions to ask attorneys in an appellate argument.

Materials
Copies of handouts:

- Questions for Observers
- Court Decisions
- The Aftermath
- Opinion Poll

Time Required
1 to 2 class period.

Procedures
■ **The next day**, tell any class members that do not have a role that they will be observers. Give them a copy of the handout "Questions for Observers," which should be completed during the arguments.

■ **Arrange the class** so that the justices are sitting in front of the room, with attorneys facing them. Allow seven minutes for the Petitioner/defense attorney(s), seven minutes for the Respondent/Government, and up to two minutes rebuttal time for the Petitioner.

■ **Then give** the justices ten minutes to confer, in the presence of the rest of the class. The Chief Justice should then announce the decision, with each justice explaining his or her supporting reasons.

■ **After the arguments**, debrief by asking the following questions, (from the Observers' form):

1. What were the strongest arguments presented by the defendants? Can you think of any good arguments they did not make?
2. What were the strongest arguments presented by the Government? Can you think of any good arguments they did not make?
3. What questions from justices were helpful in understanding each side's argument? Were there other questions you would have asked?
4. How would you have decided the case, if you were deciding in 1943?

■ **Give students** a copy of a summary of the *Hirabayashi* decision, and excerpts from the *Korematsu* decision, including the three dissents. Give students an opportunity to read the opinions, and process the information. This may be done as a writing exercise, in small groups, or as a class discussion. Encourage students to consider the outcomes, and compare with how your Court decided the cases. From their knowledge of the political climate of the times, how do they think this affected the decisions?

Do they think the government should have been allowed to set curfews, limit travel, and put japanese Americans in internment camps? (The question posed in Lesson 2.)

■ **Finally, tell students** that since the Supreme Court decision, the country has reexamined its treatment of the Japanese during World War II. Ask them to read the handout "The Aftermath."

■ **As a culminating activity**, ask students to complete the Opinion Poll that brings some of the issues we have dealt with into the present. Discuss the poll after students have completed it.

Questions for Observers

1. What were the strongest arguments presented by the Petitioners? Can you think of any good arguments they did not make?

2. What were the strongest arguments presented by the Government? Can you think of any good arguments they did not make?

3. What questions from Justices were helpful in understanding each side's argument? Were there other questions you would have asked?

4. Do you agree with the Justice's decision. Why or why not?

The U.S. Supreme Court Decisions

Hirabayashi's was the first case the Supreme Court heard regarding the constitutionality of the military orders issued pursuant to Executive Order 9066. Hirabayashi's lawyers argued that Congress unconstitutionally delegated its legislative power to the military by authorizing DeWitt to issue the orders, and that the due process clause of the fifth amendment prohibited the discrimination against citizens of Japanese descent. They also argued that Hirabayashi was a loyal citizen and should be treated as an individual. He was deprived of his life, liberty, and property without due process of law.

The government argued that the military commander (DeWitt) had authority from Congress and the President, and that there was no time, due to the imminent danger of air raids and invasion by Japanese forces, to determine the loyalty of individual Japanese American citizens.

The Court issued a unanimous ruling, affirming Hirabayashi's conviction, and upholding the government's action. The Court chose to address only the curfew order, because the trial judge had made the sentences on the two convictions run at the same time. The Court found that under the war powers given to the President and Congress in Articles I and II of the Constitution, the President and Congress have wide discretion to determine the nature and extent of the danger during war, and how to resist it. The Court concluded that there was a "substantial basis" for the action taken, citing information about how Japanese Americans had not assimilated into the white population, how Japanese children attended Japanese language schools believed to be sources of Japanese nationalistic propaganda, and how many Japanese American citizens were actually citizens of Japan also, since Japan allowed dual citizenship.

The Court then turned to the discrimination argument, and began by pointing out that the fifth amendment does not contain an equal protection clause, such as found in the fourteenth amendment. The fourteenth amendment (1968) provides in part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

> States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The fourteenth amendment is specifically aimed at discrimination by the *states*, not the federal government. In the 1950s the Supreme Court informally "incorporated" the equal protection clause of the fourteenth amendment into the due process guarantees of the fifth amendment, which applies to the federal government. See *Bolling v. Sharpe*, 347 U.S. 497 (1954).

After stating that distinctions between citizens solely because of their race are "odious to a free people whose institutions are founded upon the doctrine of equality," and that discrimination based on race alone would be insupportable, "were it not for the fact that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas," the Court concluded that:

> "The adoption by Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution and is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant." *Hirabayashi v. U.S.*, 320 U.S. 81 (decided June 21, 1943).

Gordon Hirabayashi described his reaction to the Supreme Court's decision in his pamphlet "Good Times, Bad Times":

> "My wartime judge (Judge Black, the trial judge) acted as though he was retained by the Western Defense Command. Although martial law had not been invoked on the west coast (it was in Hawaii), the judge declared that the military proclamations were the law, and thereby effectively suspended my constitutional rights. But I was not overly concerned: Whenever we reached the Supreme Court, I had felt we would have our day in court. Not so! The Supreme Court had gone to war, too.
>
> "In the check and balance system of the United States the judicial, legislative and the executive branches of the government jealously guarded their respective prerogatives. But the Supreme Court seemingly abdicated their duty to defend and uphold the constitution, deferring to the executive branch: "You're the specialists running the war and who are we to tell you what to do," or something to that effect. Even with information classified in many respects, they could have sought, before

> abandoning the constitution, why in Hawaii it was considered militarily feasible to investigate on an individual basis regarding national security whereas it was "military necessity" to mass uproot the entire Japanese American population the west coast on the basis of ancestry....
>
> "I fully expected that as a citizen the constitution would protect me. Surprisingly, even though I lost, I did not abandon my beliefs and values. Accordingly, when the discovery of government misconduct in my case during the war was revealed 40 years later, giving me the opportunity to petition for a re-hearing, I did not hesitate for a moment."

Yasui v. U.S., 320 U.S. 115 (decided June 21, 1943) was also a unanimous decision, upholding Yasui's conviction. The Court relied on the same reasoning as the Hirabayashi decision.

Korematsu v. U.S., 323 U.S. 214 (decided Dec. 18, 1944). In *Korematsu* the Court, in a 6-3 decision, relied on the Hirabayashi case. The Court affirmed the conviction of Korematsu and upheld the constitutionality of the exclusion orders, as applied to Korematsu. Doing another side-step, the Court also avoided ruling on the issue whether it would be constitutional to *detain* Korematsu, concededly a loyal citizen, in one of the camps, since there was no evidence that he would have been sent to a camp, had he reported to an assembly center!

There were three dissenting votes in the *Korematsu* case. Justice Roberts, one of the dissenters, along with Justices Murphy and Jackson, characterized the exclusion orders as "imprisonment in a concentration camp, based on ancestry." Excerpts from the actual opinions follow.

Excerpts from the *Korematsu* Case—Majority and Dissenting Opinions

December 18, 1944

Majority Opinion, Written by Justice Black
It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

Exclusion Order No. 34, which the petitioner knowingly and admittedly violated, was one of a number of military orders and proclamations, all of which were substantially based upon Executive Order No. 9066. That order, issued after we were at war with Japan, declared that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities...." One of the series of orders and proclamations, a curfew order, which like the exclusion order here was promulgated pursuant to Executive Order 9066, subjected all persons of Japanese ancestry in prescribed West Coast military areas to remain in their residences from 8 p.m. to 6 a.m. As is the case with the exclusion order here, that prior curfew order was designed as a "protection against espionage and against sabotage." In *Hirabayashi v. United States*, 320 U.S. 81, we sustained a conviction obtained for violation of the curfew order.

The Hirabayashi conviction and this one thus rest on the same 1942 Congressional Act and the same basic executive and military orders, all of which orders were aimed at the twin dangers of espionage and sabotage.

The 1942 Act was attacked in the Hirabayashi case as an unconstitutional delegation of power; it was contended that the curfew order and other orders on which it rested were beyond the war powers of the Congress, the military authorities and of the President, as Commander in Chief of the Army; and finally that to apply the curfew order against none but citizens of Japanese ancestry amounted to a constitutionally prohibited discrimination solely on account of race. To these questions, we gave the serious consideration which their importance justified. We upheld the curfew order as an exercise of the power of the government to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attack.

In the light of the principles we announced in the Hirabayashi case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one's home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a.m. Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify either. But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage. The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion. They did so, as pointed out in our Hirabayashi opinion, in accordance with Congressional authority to the military to say who should, and who should not, remain in the threatened areas.

In this case the petitioner challenges the assumptions upon which we rested our conclusions in the Hirabayashi case. He also urges that by May 1942, when Order No. 34 was promulgated, all danger of Japanese invasion of the West Coast had disappeared. After careful consideration of these contentions we are compelled to reject them.

Here, as in the Hirabayashi case … "we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it." Like curfew, exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to this country. It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group. In the instant case, temporary exclusion of the entire group was rested by the military on the same ground. The judgment that exclusion of the whole group was for the same reason a military imperative answers the contention that the exclusion was in the nature of group punishment based on antagonism to those of Japanese origin. That there were members of the group who retained loyalties to Japan has been confirmed by investigations made subsequent to the exclusion. Approximately five thousand American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.

We uphold the exclusion order as of the time it was made and when the petitioner violated it. In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.

It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. Regardless of the true nature of the assembly and relocation centers — and we deem it unjustifiable to call them concentration camps with all the ugly connotations that term implies — we are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders — as inevitably it must — determined that they should have the power to do just this. There was evidence of disloyalty on the part of some, the military authorities considered that the need for action was great, and time was short.

We cannot — by availing ourselves of the calm perspective of hindsight — now say that at that time these actions were unjustified. Affirmed.

Mr. Justice Roberts, Dissenting

I dissent, because I think the indisputable facts exhibit a clear violation of Constitutional rights. This is not a case of keeping people off the streets at night as was *Hirabayashi v. United States*, nor a case of temporary exclusion of a citizen from an area for his own safety or that of the community, nor a case of offering him an opportunity to go temporarily out of an area where his presence might cause danger to himself or to his fellows. On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. If this be a correct statement of the facts disclosed by this record, and facts of which we take judicial notice, I need hardly labor the conclusion that Constitutional rights have been violated....

I would reverse the judgment of conviction.

Mr. Justice Murphy, Dissenting

This exclusion of "all persons of Japanese ancestry, both alien and non-alien," from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over "the very brink of constitutional power" and falls into the ugly abyss of racism. In dealing with matters relating to the prosecution and progress of a war, we must accord great respect and consideration to the judgments of the military authorities who are on the scene and who have full knowledge of the military facts. The scope of their discretion must, as a matter of necessity and common sense, be wide. And their judgments ought not to be overruled lightly by those whose training and duties ill-equip them to deal intelligently with matters so vital to the physical security of the nation. At the same time, however, it is essential that there be definite limits to military discretion, especially where martial law has not been declared. Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance nor support. Thus, like other claims conflicting with the asserted constitutional rights of the individual, the military claim must subject itself to the judicial process of having its reasonableness determined and its conflicts with other interests reconciled. "What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions."

The judicial test of whether the Government, on a plea of military necessity, can validly deprive an individual of any of his constitutional rights is whether the deprivation is reasonably related to a public danger that is so "immediate, imminent, and impending" as not to admit of delay and not to permit the intervention of ordinary constitutional processes to alleviate the danger. Civilian Exclusion Order No. 34, banishing from a prescribed area of the Pacific Coast "all persons of Japanese ancestry, both alien and non-alien," clearly does not meet that test. Being an obvious racial discrimination, the order deprives all those within its scope of the equal protection of the laws as guaranteed by the Fifth Amendment. It further deprives these individuals of their constitutional rights to live and work where they will, to establish a home where they choose and to move about freely. In excommunicating them without benefit of hearings, this order also deprives them of all their constitutional rights to procedural due process. Yet no reasonable relation to an "immediate, imminent, and impending" public danger is evident to support this racial restriction which is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law.

It must be conceded that the military and naval situation in the spring of 1942 was such as to generate a very real fear of invasion of the Pacific Coast, accompanied by fears of sabotage and espionage in that area. The military command was therefore justified in adopting all reasonable means necessary to combat these dangers. In adjudging the military action taken in light of the then apparent dangers, we must not erect too high or too meticulous standards; it is necessary only that the action have some reasonable relation to the removal of the dangers of invasion, sabotage and espionage. But the exclusion, either temporarily or permanently, of all persons with Japanese blood in their veins has no such reasonable relation. And that relation is lacking because the exclusion order necessarily must rely for its reasonableness upon the assumption that all persons of Japanese ancestry may have a dangerous tendency to commit sabotage and espionage and to aid our Japanese enemy in other ways. It is difficult to believe that reason, logic or experience could be marshalled in support of such an assumption. That this forced exclusion was the result in good measure of this erroneous assumption of racial guilt rather than bona fide military necessity is evidenced by the Commanding General's Final Report on the evacuation from the Pacific Coast area.

In it he refers to all individuals of Japanese descent as "subversive," as belonging to "an enemy race" whose "racial strains are undiluted," and as constituting "over 112,000 potential enemies ... at large today" along the Pacific Coast. In support of this blanket condemnation of all persons of Japanese descent, however, no reliable evidence is cited to show that such individuals were generally disloyal, or had generally so conducted themselves in this area as to constitute a special menace to defense installations or war industries, or had otherwise by their behavior furnished reasonable ground for their exclusion as a group.

Justification for the exclusion is sought, instead, mainly upon questionable racial and sociological grounds not ordinarily within the realm of expert military judgment, supplemented by certain semi-military conclusions drawn from an unwarranted use of circumstantial evidence. Individuals of Japanese ancestry are condemned because they are said to be "a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion." They are claimed to be given to "emperor worshipping ceremonies" and to "dual citizenship." Japanese language schools and allegedly pro-Japanese organizations are cited as evidence of possible group disloyalty, together with facts as to certain persons being educated and residing at length in Japan. It is intimated that many of these individuals deliberately resided "adjacent to strategic points," thus enabling them "to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them have been inclined to do so." The need for protective custody is also asserted. The report refers without identity to "numerous incidents of violence" as well as to other admittedly unverified or cumulative incidents. From this, plus certain other events not shown to have been connected with the Japanese Americans, it is concluded that the "situation was fraught with danger to the Japanese population itself" and that the general public "was ready to take matters into its own hands." Finally, it is intimated, though not directly charged or proved, that persons of Japanese ancestry were responsible for three minor isolated shellings and bombings of the Pacific Coast area, as well as for unidentified radio transmissions and night signalling.

The main reasons relied upon by those responsible for the forced evacuation, therefore, do not prove a reasonable relation between the group characteristics of Japanese

Americans and the dangers of invasion, sabotage and espionage. The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices — the same people who have been among the foremost advocates of the evacuation. A military judgment based upon such racial and sociological considerations is not entitled to the great weight ordinarily given the judgments based upon strictly military considerations. Especially is this so when every charge relative to race, religion, culture, geographical location, and legal and economic status has been substantially discredited by independent studies made by experts in these matters.

The military necessity which is essential to the validity of the evacuation order thus resolves itself into a few intimations that certain individuals actively aided the enemy, from which it is inferred that the entire group of Japanese Americans could not be trusted to be or remain loyal to the United States. No one denies, of course, that there were some disloyal persons of Japanese descent on the Pacific Coast who did all in their power to aid their ancestral land. Similar disloyal activities have been engaged in by many persons of German, Italian and even more pioneer stock in our country. But to infer that examples of individual disloyalty prove group disloyalty and justify discriminatory action against the entire group is to deny that under our system of law individual guilt is the sole basis for deprivation of rights. Moreover, this inference, which is at the very heart of the evacuation orders, has been used in support of the abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy.

To give constitutional sanction to that inference in this case, however well-intentioned may have been the military command on the Pacific Coast, is to adopt one of the cruelest of the rationales used by our enemies to destroy the dignity of the individual and to encourage and open the door to discriminatory actions against other minority groups in the passions of tomorrow.

No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry. See House Report No. 2124 (77th Cong., 2d Sess.) 247-52. It is asserted merely that the loyalties of this group "were unknown and time was of the essence." Yet nearly four months elapsed after Pearl Harbor before the first exclusion order was issued; nearly eight months went by until the last order was issued; and the last of these "subversive" persons was not actually removed until almost eleven months had elapsed. Leisure and deliberation seem to have been more of the essence than speed. And the fact that conditions were not such as to warrant a declaration of martial law adds strength to the belief that the factors of time and military necessity were not as urgent as they have been represented to be.

Moreover, there was no adequate proof that the Federal Bureau of Investigation and the military and naval intelligence services did not have the espionage and sabotage situation well in hand during this long period. Nor is there any denial of the fact that not one person of Japanese ancestry was accused or convicted of espionage or sabotage after Pearl Harbor while they were still free, a fact which is some evidence of the loyalty of the vast majority of these individuals and of the effectiveness of the established methods of combatting these evils. It seems incredible that under these circumstances it would have been impossible to hold loyalty hearings for the mere 112,000 persons involved—or at least for the 70,000 American citizens—especially when a large part of this number represented children and elderly men and women. Any inconvenience that may have accompanied an attempt to conform to procedural due process cannot be said to justify violations of constitutional rights of individuals.

I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.

Mr. Justice Jackson, Dissenting

Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity and a citizen of California by residence. No claim is made that he is not loyal to this country. There is no suggestion that apart from the matter involved here he is not law-abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived....

A citizen's presence in the locality, however, was made a crime only if his parents were of Japanese birth. Had Korematsu been one of four—the others being, say, a German alien enemy, an Italian alien enemy, and a citizen of American-born ancestors, convicted of treason but out on parole—only Korematsu's presence would have violated the order. The difference between their innocence and his crime would result, not from anything he did, said, or thought, different than they, but only in that he was born of different racial stock.

Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable. Even if all of one's antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him, for it provides that "no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted." But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign. If Congress in peace-time legislation should enact such a criminal law, I should suppose this Court would refuse to enforce it.

But the "law" which this prisoner is convicted of disregarding is not found in an act of Congress, but in a military order. Neither the Act of Congress nor the Executive Order of the President, nor both together, would afford a basis for this conviction. It rests on the orders of General DeWitt. And it is said that if the military commander had reasonable military grounds for promulgating the orders, they are constitutional and become law, and the Court is required to enforce them. There are several reasons why I cannot subscribe to this doctrine.

It would be impracticable and dangerous idealism to expect or insist that each specific military command in an area of probable operations will conform to conventional tests of constitutionality. When an area is so beset that it must be put under military control at all, the paramount consideration is that its measures be successful, rather than legal. The armed services must protect a society, not merely its Constitution. The very essence of the military job is to marshal physical force, to remove every obstacle to its effectiveness, to give it every strategic advantage. Defense measures will not, and often should not, be held within the limits that bind civil authority in peace. No court can require such a commander in such circumstances to act as a reasonable man; he may be unreasonably cautious and exacting. Perhaps he should be. But a commander in temporarily focusing the life of a community on defense is carrying out a military program; he is not making law in the sense the courts know the term. He issues orders, and they may have a certain authority as military commands, although they may be very bad as constitutional law.

But if we cannot confine military expedients by the Constitution, neither would I distort the Constitution to approve all that the military may deem expedient. That is what the Court appears to be doing, whether consciously or not. I cannot say, from any evidence before me, that the orders of General DeWitt were not reasonably expedient military precautions, nor could I say that they were. But even if they were permissible military procedures, I deny that it follows that they are constitutional. If, as the Court holds, it does follow, then we may as well say that any military order will be constitutional and have done with it.

The limitation under which courts always will labor in examining the neces-sity for a military order are illustrated by this case. How does the Court know that these orders have a reasonable basis in necessity? No evidence whatever on that subject has been taken by this or any other court. There is sharp controversy as to the credibility of the DeWitt report. So the Court, having no real evidence before it, has no choice but to accept General DeWitt's own unsworn, self-serving statement, untested by any cross-examination, that what he did was reasonable. And thus it will always be when courts try to look into the reasonableness of a military order.

In the very nature of things, military decisions are not susceptible of intelligent judicial appraisal. They do not pretend to rest on evidence, but are made on information that often would not be admissible and on assumptions that could not be proved. Information in support of an order could not be disclosed to courts without danger that it would reach the enemy. Neither can courts act on communications made in confidence. Hence courts can never have any real alternative to accepting the mere declaration of the authority that issued the order that it was reasonably necessary from a military viewpoint.

Much is said of the danger to liberty from the Army program for deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. All who observe the work of courts are familiar with what Judge Cardozo described as "the tendency of a principle to expand itself to the limit of its logic." A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image. Nothing better illustrates this danger than does the Court's opinion in this case.

It argues that we are bound to uphold the conviction of Korematsu because we upheld one in *Hirabayashi v. United States*, 320 U.S. 81, when we sustained these orders in so far as they applied a curfew requirement to a citizen of Japanese ancestry. I think we should learn something from that experience.

In that case we were urged to consider only the curfew feature, that being all that technically was involved, because it was the only count necessary to sustain Hirabayashi's conviction and sentence. We yielded, and the Chief Justice guarded the opinion as carefully as language will do. He said: "Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulgation, the challenged orders and statute afforded a reasonable basis for the action taken in imposing the curfew." 320 U.S. at 101. "We decide only the issue as we have defined it—we decide only that the curfew order as applied, and at the time it was applied, was within the boundaries of the war power." 320 U.S. at 102. And again: "It is unnecessary to consider whether or to what extent such findings would support orders differing from the curfew order." 320 U.S. at 105. However, in spite of our limiting words we did validate a discrimination on the basis of ancestry for mild and temporary deprivation of liberty. Now the principle of racial discrimination is pushed from support of mild measures to very harsh ones, and from temporary deprivations to indeterminate ones. And the precedent which it is said requires us to do so is Hirabayashi. The Court is now saying that in Hirabayashi we did decide the very things we there said we were not deciding. Because we said that these citizens could be made to stay in their homes during the hours of dark, it is said we must require them to leave home entirely; and if that, we are told they may also be taken into custody for deportation; and if that, it is argued they may also be held for some undetermined time in detention camps. How far the principle of this case would be extended before plausible reasons would play out, I do not know.

I should hold that a civil court cannot be made to enforce an order which violates constitutional limitations even if it is a reasonable exercise of military authority. The courts can exercise only the judicial power, can apply only law, and must abide by the Constitution, or they cease to be civil courts and become instruments of military policy.

Of course the existence of a military power resting on force, so vagrant, so centralized, so necessarily heedless of the individual, is an inherent threat to liberty. But I would not lead people to rely on this Court for a review that seems to me wholly delusive. The military reasonableness of these orders can only be determined by military superiors. If the people ever let command of the war power fall into irresponsible and unscrupulous hands, the courts wield no power equal to its restraint. The chief restraint upon those who command the physical forces of the country, in the future as in the past, must be their responsibility to the political judgments of their contemporaries and to the moral judgments of history.

My duties as a justice as I see them do not require me to make a military judgment as to whether General DeWitt's evacuation and detention program was a reasonable military necessity. I do not suggest that the courts should have attempted to interfere with the Army in carrying out its task. But I do not think they may be asked to execute a military expedient that has no place in law under the Constitution. I would reverse the judgment and discharge the prisoner.

The Aftermath

Since the Supreme Court decisions, the country has reexamined its treatment of the Japanese Americans during World War II. In 1976, President Ford rescinded Executive Order 9066, and in 1980 Congress repealed Public Law 503 and created the Commission on Wartime Relocation and Internment of Civilians.

The Commission conducted hearings on the internment from July to December 1981. The Commission's report *Personal Justice Denied*, issued December 1982, concludes that "a grave injustice" had been committed against Japanese Americans.

In 1985, Gordon Hirabayashi had a second trial, on his *coram nobis* petition. *Coram nobis* is a rarely used judicial process, by which a court can correct an error made in an earlier criminal conviction. The evidence at trial consisted of documents found at the National Archives, and others obtained under a Freedom of Information Act request that showed that government lawyers during the appeal to the U.S. Supreme Court in 1943 had intentionally withheld important intelligence reports and other evidence from the courts that showed that the "military necessity" for the internment was less dire than asserted.

For example, the government lawyers had claimed that there was no time to determine the loyalty of individual Japanese Americans. The evidence uncovered revealed that the military commanders had decided that it would be impossible to determine loyalty of the Japanese, *regardless* of the time factor.

The judge at Hirabayashi's second trial set aside the conviction on Count I, the exclusion order, but not Count II, the curfew order. Both sides appealed, and the Ninth Circuit Court of Appeals set aside both convictions. Finally, in 1987, Gordon Hirabayashi's struggle to clear his name was over!

In August 1988, Congress passed a statute that provides compensation, up to a maximum of $20,000 per individual, for Japanese Americans and resident aliens who were living as of August 10, 1988 and who were confined, held in custody, relocated or otherwise deprived of property or liberty as a result of Executive Order 9066. That money is still being paid to survivors.

Opinion Poll —
How Far Can the Government Go?

Directions: Read the following statements and place the letter that most closely corresponds with your opinion in the left-hand blank. **SA** (Strongly Agree), **A** (Agree), **U** (Undecided), **D** (Disagree), **SD** (Strongly Disagree).

______ 1. The U.S. is at war with Iraq. There have been threats of terrorism against Americans, and reports that Iraqis in the U.S. are planning terrorist attacks in major American cities. The U.S. government should be able to require all Iraqi aliens in the United States to report to the government for questioning.

______ 2. The U.S. is at war with Iraq. There have been terrorist attacks on American citizens living in Los Angeles, allegedly led by Iraqis. The government should be able to require all American citizens of Iraqi descent living in the Los Angeles area to report to the FBI for questioning.

______ 3. The U.S. is at war with Iraq. An American passenger plane was destroyed by a terrorist bomb, killing 250 people. Airline officials in the U.S. should have the right to stop and question anyone boarding an airplane who looks like an Iraqi.

______ 4. Both homosexual men and drug addicts with AIDS should be forcibly quarantined (kept in isolation from all other people) until the AIDS epidemic is controlled. This would be for their own protection, as well as the safety of the public.

______ 5. It is the year 1997. The drug problem in the U.S. has reached epidemic proportions. Crack dealers are on every street corner, and crack houses have taken over large areas in many American cities. The President has issued an Executive Order, declaring the situation a national emergency and authorizing the National Guard to round up dealers and users within areas to be determined by commanders of the National Guard and put them in prison. This should be allowed.

______ 6. Crime involving teenagers in the early morning hours has been on the rise in a large urban area. In order to protect teens from being victims of crime, and to control roving gangs of teens, a curfew should be enacted by the County Council. The curfew would require that everyone 16 years old and under be off the streets between the hours of 11 p.m. and 6 a.m.

Salmon Summit

Introduction

Description

This multidisciplinary unit is centered on giving students practice in using mediation as a creative way to find acceptable solutions to complex issues. Blending science with civics, this unit is unique in its investigation of the perspectives of diverse groups with vested interests in the outcome. What began nearly twenty years ago as an "Indian issue" has become a national concern. The fate of the salmon affects every citizen.

The Washington State Legislature has mandated environmental education and this unit can help meet that requirement. This unit capitalizes on cooperative group strategies and provides for utilization of the multiple intelligences.

Use of Outside Resource Persons

This unit, like nearly all law-related education units, is enhanced by using outside resource people. Trained mediators, environmental experts, commercial and recreational fishers, scientists, judges, and lawyers will be able to help the teacher and the students comprehend this complex issue.

Time Required

12 to 15 class periods.

Overall Outcomes

Teachers will discover they can readily use their reading/language arts, social studies and/or science periods to facilitate this unit, as the integration of skills and concepts used meet common student learning objectives in all four subject areas.

Social Studies Outcomes

The students:

- Trace the role of salmon in the history of the Pacific Northwest.
- Discuss the role of salmon today, using facts to support their statements.
- Identify points of view and the possible values these points of view have by using a value descriptor key.
- Work in cooperative groups.
- Analyze laws and their history.
- Synthesize characters based on research.
- Write and/or draw, highlighting issues.
- Cooperatively develop plans of action to solve problems.
- Practice mediation and discuss its pros/cons.
- Practice the skills of compromise.
- Participate in public service projects.

Reading and Language Arts Outcomes

The students:

- Develop a logical sequence of ideas from given readings.
- Demonstrate research skills using a variety of resources.
- Read and analyze a variety of material.
- Prepare and present information orally to meet specific criteria.
- Review and discuss laws.
- Compare/contrast various points of view on an issue.
- Write poetry and/or songs.
- Write newspaper articles using standard format and criteria.
- Role play, creating and maintaining a character based on research of an issue.

Science Outcomes

The students:

- Identify the life cycle of the salmon.
- Describe anadromous fish.
- Illustrate salmon habitat and habitat destruction.
- Teach others about the kinds of salmonids.
- Demonstrate the structure and function of fish.
- Analyze threats to the salmonids.
- Develop models of watersheds.
- Identify the characteristics of estuaries and discuss their value to the environment.

Higher Order Thinking Skill Outcomes

The students:

- Practice independent and cooperative decision-making.
- Solve problems.
- Analyze and apply law.
- Develop ways to teach others new information.
- Create criteria and analyze their own performance based on that criteria.
- Practice suppositions, proofs, and rationales for social issues.
- Listen and participate in small and large group discussions using analysis and synthesis to solve problems.
- Write papers stating and supporting their opinion based on research.
- Evaluate consequences.
- Use hypothetical situations to practice problem-solving skills.

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Stream Team Guidebook. City of Bellevue Storm and Surface Water Utility. 1989. "How residential and business volunteers can protect and enhance our water quality, fish, and wildlife."

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Washington State Department of Fisheries. *Salmon Activity Packet for the Classroom, Elementary Level*. Olympia, WA. 1993. Activities for grades 4 – 5. Available by request from Department of Fisheries (206) 902-2261.

Waterton, Betty. *A Salmon for Simon*. Toronto: Douglas & McIntyre Ltd. 1980. Children's illustrated book about boy fishing for salmon.

Williamson, Henry. *Salar the Salmon*. Boston : David R. Godine, Publisher. 1990. Illustrated story of an Atlantic salmon, describing "some of the horrid things that happen in a pleasant-looking stream."

Yates, Steve. *Adopting a Stream: A Northwest Handbook*. Seattle: University of Washington Press. 1988. Loaded with specific local information on how to go beyond talking about salmon. Good black and white illustrations that make excellent overheads.

Videotapes

Northwest Power Planning Council. "Journey of the Kings." Half-hour video about the plight of the Columbia River salmon and regional program to protect them. To borrow a copy, contact the Council at 1-800-222-3355 (from Washington, Montana, or Idaho.)

"When the Salmon Runs Dry." KIRO Productions. $20. One-hour program about salmon runs. Describes the different interest groups involved, and their perspectives on possible solutions. For a copy, contact Ben Saboonchian, KIRO Public Affairs, KIRO, Inc., 2807 3rd Ave., Seattle, WA 98121.

Agencies

Bonneville Power Administration
District Offices:
Seattle (206-553-4130
Spokane 509) 353-2515
Wenatchee (509) 662-4377
Walla Walla (509) 522-6225

BPA Division of Fish and Wildlife
PO Box 3621
Portland, OR 97208

Northwest Power Planning Council
Central Office
851 SW Sixth Ave., Suite 1100
Portland, Oregon 97204
(503) 222-5161
Toll Free: 1-800-222-3355

Washington Office:
809 Legion Way, SE
Olympia, WA 98504-3166
(206) 956-2200

U.S. Army Corps of Engineers
Seattle District
4735 E. Marginal Way S.
Seattle, WA 98124-2255
Public Affairs: (206) 764-3750

U.S. Department of Commerce
National Marine Fisheries Service
Endangered Species Coordinator
Environmental and Technical Services
Division
911 NE 11th Ave., Room 602
Portland, OR 97232
(503) 230-5400

U.S. Department of the Interior
Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232-4181

Washington Department of Fisheries
PO Box 43136
Olympia, WA 98504-3136
General #(206) 902-2200
Aquatic Education Program Specialist:
Donna Van Kirk
(206) 902-2261

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
MUSICAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Salmon Summit

Lesson 1

Objectives
Students will:

- Investigate an aspect of the life of salmonids in the Pacific Northwest.
- Design a large, informational poster highlighting their research.
- Discuss strategies for remembering the information that will be presented.
- Present the results of their research at a "teach-in" session and display their posters.
- Evaluate their own work using a predetermined criteria.

Materials

- Assorted art supplies: markers, poster board, stencils, etc.
- Books and print material on salmonids (see bibliography).
- Evaluation Sheet.
- Reading, "Columbia River's 200 Years as 'Cord of Life of Northwest.'"
- Salmon Circle song.

Time Required
5 to 7 class periods.

Prior to Lesson

- Run copies of material that might prove helpful for the students to use during their research if you have a young class or are pressed for time. (See bibliography.)
- Read all the attached print material so that you have a familiarity with the issues and the various interest groups involved in the salmon question.
- Run copies of the evaluation sheet and the newspaper article "Columbia River's...."

Procedures
■ **Tell your students** the story of the Salmon Chief:

"There is a Northwest Indian story that tells of the Salmon Chief. As the leader of all the salmon people, it is his duty to send a scout to the land of the humans once a year. If the humans treat the scout with respect, the Salmon Chief leads his people up the rivers to spawn once more. However, if the scout should ever report disrespectful treatment, the Salmon Chief would return no more.

"On the Tulalip Indian reservation near Marysville, Washington, the Tulalip people wait each year for the salmon scout to celebrate the First Salmon Ceremony. When he is caught, the fish is brought ashore on a plank adorned with fresh fern boughs and is cooked in the traditional manner. Every bone of the fish is carefully preserved. When the ceremony is over, the bones are respectfully returned to the waters of Port Susan Bay so that the scout can return and reassure the Salmon Chief that the people acknowledge his importance."

■ **Is it harder** for the salmon to return each year? Why? List students' responses on the board or overhead.

> The return of salmon today has become a major issue. Many groups of people are involved. Each group seems to have a different idea about who's to blame and how to solve this issue. We are going to spend the next couple of weeks immersing ourselves in the salmon issue. Our first step is to learn all we can about this particular species.

■ **Find out** if anyone knows what a salmonid is.

> The term "salmonid" refers to all the fish in the family related to the species we commonly call salmon: steelhead, grayling, char, cutthroat, etc. Some of the fish are anadromous (migrate from fresh water to salt water) and some are not.

■ **Tell the students** that they are going to create an informational presentation with an accompanying poster about different aspects of the salmon. Ask the students to volunteer or use a lottery system to identify which student will be responsible for what specific information. [You might want to show one of the videos at this point, to help students decide what topics they want to research. "When the Salmon Runs Dry" gives an excellent overview.] Most classes will require assigning two or three students to a topic, encouraging cooperative group work.

Suggested topics:

- Life Cycle of a Salmon
- Kinds of Salmonids
- Anadromous Fish
- Habitat of Salmon
- Structure and Function of a Salmon
- Food Web of the Salmon
- Importance of Streams to Salmon
- Threats to Salmon
- Role of Salmon in History
- Role of Salmon Today
- Watersheds and Salmon
- Estuaries and Salmon
- Other student-initiated topics

■ **Ask students** to identify the characteristics of a good informational poster; for example, clear, simple, accurate, eye-catching, memorable, large, well-planned. The goal is to design the poster to emphasize the salient points of the topic. Set a maximum time limit per presentation; e.g., five minutes. Suggest that students work on the oral presentation first and then do a draft of the poster in pencil before using markers or paint. Remind them to check spelling and spacing. Recommend to the students that they outline their lettering in fine black felt tip for better effect.

■ **Share the evaluation sheet** that will be used. A model is attached. Tailor it to fit the characteristics your class identifies as important.

■ **Agree on a deadline** when all work will be accomplished, ready to be shared. Stress the importance of this assignment. Remind students that they will be teaching the class information vital for the rest of the unit and that the research they will do is critical to the success of the Salmon Summit they will be holding later.

■ **On the day** of the presentations, tell the students that it is especially important that everyone learn from everyone else. As the different groups or individuals present, ask what are some strategies students might use to really learn from each presentation? Discuss.

■ **Proceed** with presentations. You may want to leave time for questions and discussion at the end of each presentation. Using the Evaluation Sheet, you might want to evaluate each presentation at this time.

■ **Using the Evaluation Sheet**, ask students to evaluate their own presentation and poster. Depending on your goals for the class, you might want to meet with each group individually and compare your evaluation with theirs. Or you might simply collect the student evaluations and average them with yours for a grade.

■ **Pass out reading**, "Columbia River's 200 Years as 'Cord of Life of Northwest.'" Depending on time, either read in class or make it a homework assignment. This is an excellent history piece on the Columbia River and helps set the stage for the rest of the unit's work.

Extensions

- Bring in a salmon and identify the structure and function of each part.
- Go to a hatchery to see how salmon are raised.
- Make paper salmon with structure accurately portrayed. Hang the fish from ceiling.
- If it is the fall, travel to a stream to watch the salmon return.
- Bring a fish biologist or a State Fisheries/Wildlife expert to talk about the salmon.
- Watch a video: either "When the Salmon Runs Dry," or "Journey of the Kings." (See bibliography.)
- Introduce the Salmon Circle song. Once learned, the melody is quite haunting. Students might be able to bring in instruments or tapes of accompaniment. Tell the students while this is not an Indian song, it is based on Indian songs. They might want to try to write their own song.

Evaluation Sheet

(10 points possible per category)

Oral presentation:

1. Did I speak loudly enough for the whole class to hear?
2. Did I look at my audience?
3. Did I stand calmly?
4. Was I well-prepared?
5. Did I present important information?

Poster presentation:

6. Did my poster have a title?
7. Was the information clearly depicted?
8. Was the information accurate?
9. Was the poster eye-catching?
10. Was it large enough for everyone to see?

What would I do differently if I did this project again?

Signed: ______________________________ Total points: __________

Columbia River's 200 Years as "Cord of Life of Northwest"

By Nicholas K. Geranios, Associated Press
Los Angeles Times
August 30, 1992

ROCKY REACH DAM, Wash. — Stand on this massive Columbia River dam and you can view salmon swimming up a concrete fish ladder, listen to the hum of electrical transmission towers, and gaze at fruit orchards along the shore. This is not the same river that Robert Gray discovered 200 years ago.

But it is a microcosm of the uses and abuses the Columbia River has endured since Gray became the first white person to enter the river on May 11, 1792, nearly 500 miles south of here.

While the world commemorates the 500th anniversary of Christopher Columbus' voyage to America, the Columbia River bicentennial has been largely ignored, except in the Northwest.

Yet the river's discovery launched settlement and industries that are profoundly important today.

Aerospace, agriculture, aluminum and atom bombs all owe a debt to the 1,210-mile Columbia.

"This is one of the most powerful river courses in the world," says Bill Lang, a professor at Washington State University. "It's the cord of life of the Northwest."

Europeans had heard legends of a great river of the West almost from the time of Columbus. But generations of explorers failed to prove such a river existed.

The spot where the massive Columbia pours into the Pacific Ocean had looked like a river to some passing mariners, but none dared try to sail past the treacherous bar to find out.

Gray, a fur trader hired by Boston businessmen, determined to test the theory during his 1792 voyage.

"Gray believed what he heard about the river being here," said Garry Breckon, director of the Columbia River Bicentennial Commission in Portland, Ore.

Against the advice of Capt. George Vancouver of the British navy, Gray navigated his ship through the treacherous waters and into the estuary the morning of May 11.

"He must have been very lucky with regard to weather," Breckon says. "He did it with no knowledge of the underwater terrain."

Gray's entry formed the basis for the later U.S. claim to the river over Great Britain. He named the river after his ship, the Columbia Rediviva.

But like many great discoveries, this one was not immediately appreciated.

"When we were over the bar, we found this to be a large river of fresh water, up which we steered," Gray wrote in undramatic prose in his log.

Gray's second mate, John Boit, was more moved.

"The river extended to the NE as far as the eye cou'd reach, and waters fit to drink as far down as the bars at the entrance," Boit wrote in his log. "We directed our course up this noble river in search of a village."

The Columbia Rediviva sailed a few miles upriver, made repairs and filled its water casks, as Gray traded with Indians for furs.

Breckon said the trading was not good, since Gray was primarily after sea otter pelts.

On May 20, Gray sailed out of the river and continued north to acquire more furs.

"I don't think he realized how important what he did was," Breckon said. "He dropped into obscurity. He probably died about 1806 of yellow fever and was buried at sea."

The British quickly realized the importance. Vancouver, the British navy captain, hustled to the river's mouth to stake a British claim.

The HMS Chatham, led by Lt. William Broughton, succeeded in entering the Columbia and sailed 20 miles upriver. Broughton then traveled an additional 80 miles in a smaller boat to a site near present-day Vancouver, Wash.

Broughton contended that Gray had not actually entered the river itself but only a sound that preceded it.

That was the basis of the English claim that Broughton had actually claimed the river for his country. The matter was not settled until 1846 when the 49th parallel was established as the border between the United States and Canada.

Gray's chart of his passage into the river was a key document in that decision. The chart is currently on display at a major Columbia River exhibition in Astoria, Ore.

"If the U.S. had not been able to establish a presence ahead of the British, we would now be living in Mexico and looking across the river at Canada," Breckon says.

The first major use of the Columbia was for transportation into the interior.

The onslaught of Europeans proved a disaster for the Indian tribes.

"Disease wiped out half the native

population by 1830," Lang says. "Smallpox, diphtheria, cholera, malaria."

In 1811, John Jacob Astor and his Pacific Fur Co. established Astoria, the first American settlement west of the Rocky Mountains, and began the commercialization of the region.

In the 1930s, hydroelectric dams arrived and the river's benefits vastly expanded. The river offers about one-third of the potential hydropower in the United States.

These days, the river and its tributaries:

- Provide irrigation water for more than 1 million acres of crops and billions of dollars in revenue. Most of the nation's apples, frozen french fries, cherries and 40 other crops are watered by the Columbia and its tributaries.
- Provide hydroelectric power that is shipped throughout the West, and made possible the industrialization of the Northwest. A third of the power is used by aluminum reduction mills that produce 40% of the nation's supply, including much of the skin for Boeing airliners.
- Provide the water highway by which barges as far inland as Lewiston, Idaho, carry Western grain to seaports for export.
- Provided the power and cooling water to operate nine plutonium reactors at the Hanford nuclear reservation in Washington state, which made most of that key ingredient in nuclear weapons.
- Provide a wealth of tourist and recreation opportunities, including the Columbia River Gorge National Scenic Area, established in 1986, plus reservoirs for fishing and boating and extensive museum and visitor centers at dams.

But all this development has a negative side that has become prominent only in recent years.

The dams decimated the wild salmon runs, devastating Indian religious and cultural practices, and spawning an ongoing debate on how to restore the endangered species.

The potential effect of saving the salmon could run into billions of dollars. About $1 billion has been spent since 1981 with mixed results.

Spectacular Celilo Falls was inundated by the waters of The Dalles Dam, destroying an ancient Indian fishing ground that is still mourned 30 years later.

Also, the Hanford nuclear reservation produced nuclear waste either dumped directly into the river or to ground water that eventually reached the river. The nation's most polluted nuclear site will require billions to clean up, and may have damaged the health of thousands of nearby residents.

The river also suffers from siltation caused by logging, and pollution from runoff of agricultural chemicals and chemicals used in paper mills, Lang says.

For all the development, the Columbia remains relatively clean by the standards of other highly developed river systems, Lang says.

One reason is the lack of population along its banks.

For much of its course through the United States it winds past farms, desert lands and between the walls of a huge gorge. The cities are small population centers such as Wenatchee, Wash., Richland-Kennewick-Pasco, Wash., and The Dalles, Ore.

Only near the end of its course at Portland, Ore., does the river reach a major city.

In addition, the river's two greatest resources—irrigation water and electricity—were easily transported elsewhere and users do not need to locate nearby, Lang says.

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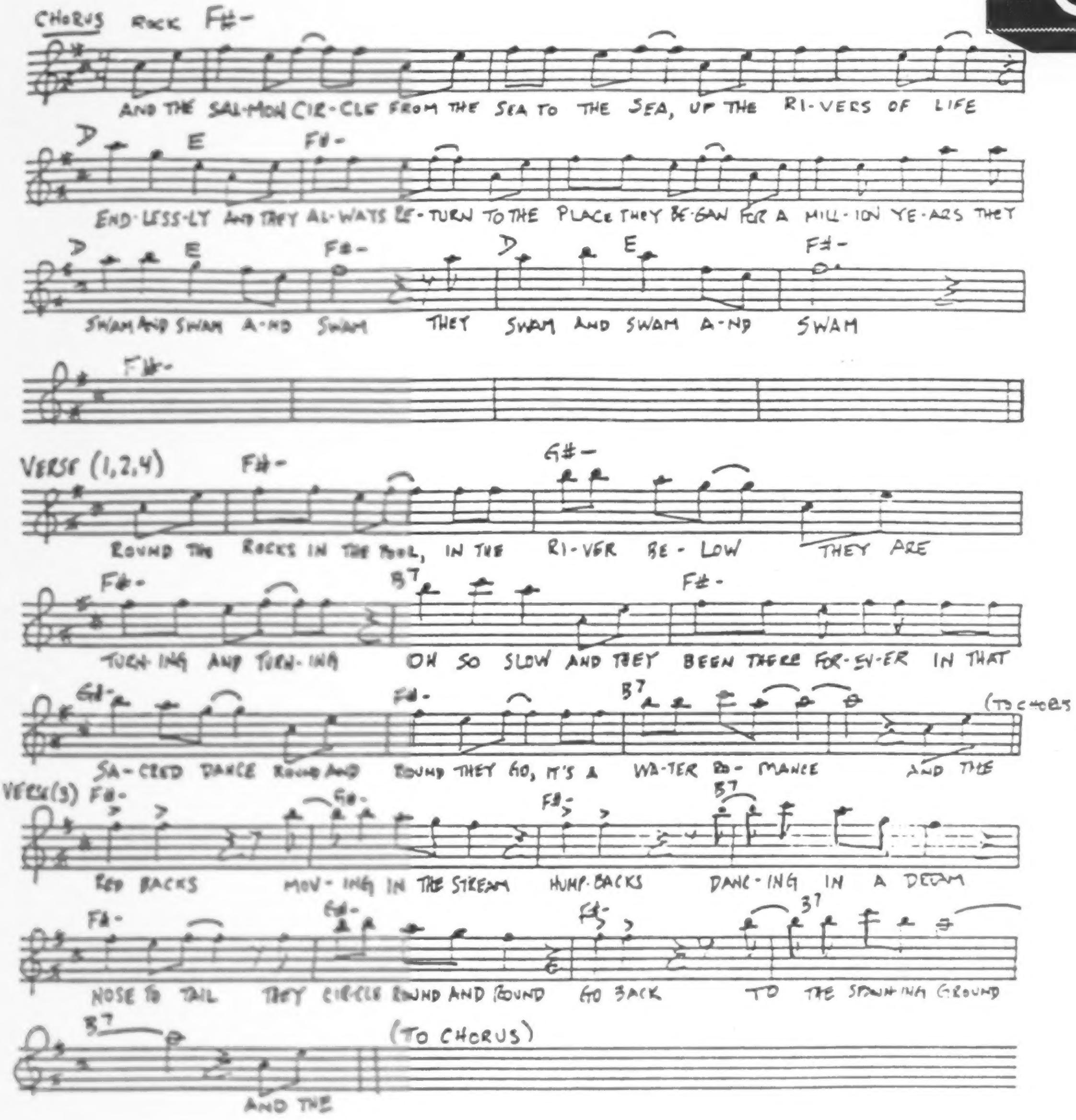
The Salmon Circle

(By Fraser Lang, as enacted at the Longhouse Wednesday night)


CHORUS ROCK F#-
AND THE SAL-MON CIR-CLE FROM THE SEA TO THE SEA, UP THE RI-VERS OF LIFE
D E F#-
END-LESS-LY AND THEY AL-WAYS RE-TURN TO THE PLACE THEY BE-GAN FOR A MILL-ION YE-ARS THEY
D E F#- D E F#-
SWAM AND SWAM A-ND SWAM THEY SWAM AND SWAM A-ND SWAM
F#-
VERSE (1,2,4) F#- G#-
ROUND THE ROCKS IN THE POOL, IN THE RI-VER BE-LOW THEY ARE
F#- B7 F#-
TURN-ING AND TURN-ING OH SO SLOW AND THEY BEEN THERE FOR-EV-ER IN THAT
G#- F#- B7
SA-CRED DANCE ROUND AND ROUND THEY GO, IT'S A WA-TER RO-MANCE AND THE
(TO CHORUS)
VERSE(3) F#- G#- F#- B7
RED BACKS MOV-ING IN THE STREAM HUMP-BACKS DANC-ING IN A DREAM
F#- G#- F#- B7
NOSE TO TAIL THEY CIRCLE ROUND AND ROUND GO BACK TO THE SPAWN-ING GROUND
B7
AND THE
(TO CHORUS)

(2)
To the long slow rhythm of a four-year cycle,
to the pounding beat of the oceans that are like a
drum that sounds clear across the globe,
and it's calling its children,
it's calling [redacted] home.

(4)
By the taste of the waters they return to the source
lay down their eggs feel the life force
resting safe in the gravel pass the winter through,
these great fish are dying
but in [redacted] spring life renews.

BEST COPY AVAILABLE

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Salmon Summit

Lesson 2

Objectives

- Students will read newspaper and magazine articles to identify the diverse groups of people who have a vested interest in recovering and enhancing the dwindling salmon runs.
- Students will identify statements, feelings, and facts attributed to each group from the readings.
- Students will speculate about the beliefs and values of each group regarding salmon recovery and enhancement.

Materials

Copies of handouts:

- Value descriptors
- Issue analysis chart

Newspaper articles

Time Required

2 to 3 class periods.

Prior to Lesson

- **Divide students** into groups of no more than 3 or 4 students. Make copies of the attached articles so each group has one or two articles to read and analyze. Make enough copies for each student to have an individual copy of his or her group's articles.

Procedures

■ **Ask the students** why salmon runs might be extinct or threatened with extinction. Discuss.

■ **Tell the students** they are going to read information from newspapers and magazines to find out about the reasons for the dwindling salmon runs. They will find, as they read, that different groups of people think there are different reasons for the decrease. Tell students they should start to identify each group of people that has a point of view or an interest in the survival of the salmon.

■ **Pass out** the articles. Before students begin reading, ask them what we mean by "bias." Remind them that each writer or journalist has a point of view, even if they intend to be neutral. Point out that some newspapers or magazines have an editorial slant and that it is helpful to be aware of that slant when reading and evaluating information derived from that source.

Encourage students to evaluate the author's point of view and to be aware of bias when reading the articles. Then, tell students to read silently and highlight important information.

■ **In their small groups**, ask the students to work cooperatively to identify the different groups who have a vested interest in the salmon cycle and briefly discuss their points of view. If you have time for students to do additional research, you may want to provide students with addresses and phone numbers (in the bibliography) of some of the government agencies involved in the salmon issue.

■ **Ask each group** to report about their article. On the overhead or on the blackboard, the teacher or a student should record information from each group, listing interested groups and any comments regarding its point of view. (Some teachers might find it useful to make a "mind map" to record the information given at this point, rather than a list.)

Groups of interested people who should be identified:

- Commercial fishers
- Recreational fishers
- Indian fishers
- Environmentalists
- Bonneville Power Authority
- Farmers from Eastern Washington
- Barge owners on the Columbia River
- Aluminum factory owners
- Loggers/miners
- Hatchery owners
- Commercial fish farmers
- State Fisheries and State Wildlife Departments
- Fish advocates
- Citizens (tax and rate payers)
- Army Corps of Engineers
- Biologists

■ **With this list of groups** with a vested interest in the salmon, plus any others students add, ask the students to return to their readings. Ask them to scan the reading looking for comments or statements made by representatives of each group. List each statement under the group. (See sample below.)

■ **Using the issue analysis chart** and the value descriptors, attribute likely beliefs and values to each group. Sample:

Commercial Fishermen

- We've given up more than anyone else already.
- We're almost an endangered species ourselves.
- How will we support our families?

Indian Fishermen

- Salmon are a way of life.
- We are guaranteed by treaty 50% of the salmon.
- The state is obligated to make sure there are salmon for us to catch.

Recreational Fishermen

- We used to catch more fish. Now there's hardly any left.
- We bring in a lot of money for the state—we should be favored.
- Fishing is a right.

Farmer

- If I don't get the water I need for my crops, I'm out of business.
- Food will become more expensive.
- More people will be out of work.

Extension

If possible, interview someone from one or more of the vested groups to discover what they believe and what they value. If not possible, survey a group of adults to see what they can tell students about their beliefs and values regarding salmon recovery and enhancement. Report on the findings.

Value Descriptors

The following statements attempt to name and define specific value positions. These definitions as well as the list itself are incomplete.

Political	The activities, functions, and policies of governments and their agents.
Economic	The use and exchange of money and materials.
Religious	The use of belief systems based on faith; dogma.
Ecological	The maintenance of the integrity of natural systems.
Scientific	Concerning those attributes associated with observable proof or experiments which can be duplicated.
Cultural	Pertaining to the continuation/preservation of the beliefs, values, arts, customs, etc. of a society.
Educational	Concerning the accumulation, use, and communication of knowledge.
Aesthetic	The appreciation of form, composition, and color through the senses.
Social	Pertaining to shared human feelings, empathy, and status.
Recreational	Pertaining to a focus on individual self-satisfaction and fulfillment.
Egocentric	Pertaining to leisure activities.
Ethnocentric	Pertaining to a focus on the fulfillment of ethnic goals.
Health	The maintenance of positive human physiological conditions.
Ethical/Moral	Pertaining to present and future responsibilities, rights and wrongs, and ethical standards.

From Kraft General Foods Environmental Institute Program, 1991

Issue Analysis Chart

Critical questions about issues:

1. Who has a vested interest?

2. What are their beliefs and values?

3. How valid is the information used by each interested group?

4. How valid is the interpretation of the information used by each interested group?

5. How is the issue decision to be made?

6. What are the trade-offs involved in solving the issue?

   Benefits: who? what?

   Costs: who? what?

7. Are all the interested groups bearing the costs and gaining the benefits equally?

8. What are the intended results? And the unintended consequences?

Adapted from Kraft General Foods Environmental Institute Program, 1991

Issue Analysis Chart

The Issue:

The Interested Groups	Their Beliefs	The Values

Adapted from Kraft General Foods Environmental Institute Program, 1991

Lifestyles, Livelihoods Are at Stake Over Pending Endangered-Species Decision—Difficulty in Trying to Define a Species

By Jim Simon, Marla Williams
The Seattle Times
March 31, 1991

Within a few days, those who have dammed, dredged and fished the Columbia River will likely be feeling what one calls a "loaded bureaucratic pistol to our head"—the federal Endangered Species Act.

The law is a potent weapon in the fight to save salmon. Already it has triggered political, economic and scientific considerations immensely more complex and far-reaching than those that went into last year's ruling to protect the spotted owl.

This time around, the final decision to list the salmon as endangered or threatened rests with Secretary of Commerce Robert Mosbacher. This week, he is expected to act on a petition from Idaho's Shoshone Bannock Tribe, which seeks to protect the wild sockeye run on the Snake River.

By June 7, the agency is scheduled to rule on petitions filed by Oregon Trout and other conservation groups seeking protection for four other wild runs in the Columbia River system: three seasonal Chinook runs that spawn in the Snake and a coho strain native to the lower Columbia.

In making the decisions, Mosbacher will be looking chiefly to the Commerce Department's National Marine Fisheries Service and its Northwest regional director, Rolland Schmitten. Schmitten has already made his recommendation on the sockeye run, but he will not say what it is.

If any of the salmon runs is listed, Schmitten's agency will have one year to draft a long-term recovery plan.

Spreading the Pain

It's in the recovery plan that the real impact would be felt. Such a plan would require that, for the first time since the concrete monoliths of Grand Coulee and Bonneville were erected decades ago, survival of the salmon be given top priority in river-management decisions.

In theory, the government could dramatically curtail all activities—power generation, irrigation, shipping and fishing—that interfere with the survival of salmon. Regardless of cost.

Whatever recovery plan is shaped, says Schmitten, it will have to include not just protection for the remaining fish but a measurable means of increasing its numbers.

To policy-makers like Washington Gov. Booth Gardner, the most immediate question is whether the river's myriad interest groups can agree on a regional protection plan, rather than leaving the job to the courts or politicians in Washington, D.C.

"What we've got to do now is come up with our own regional plan that spreads the pain across the river system so nobody gets crushed," says Gardner aide Dan Silver.

Looking Locally

Schmitten, a former Washington state legislator and fisheries-department director, favors a local solution. De facto responsibility for drafting the recovery plan, he says, should go to a group that has already spent a lot of time thrashing through the issues: the "Salmon Summit" convened last fall by Oregon Sen. Mark Hatfield.

So far, though, the summit's widely diverse members have failed to find the kind of negotiated solution Schmitten envisions.

Says Bruce Lovelin, who represented irrigation interests, "I think people came with an all-or-nothing attitude. The accomplishments though, are appreciable: The summit, if we'll allow it to be, has started the road to recovery."

And, Schmitten notes, the recovery plan his agency adopts would have the clear enforcement authority that the summit and previous programs have lacked. Schmitten's agency would focus first on increasing water flows to help fish migrate, and on further fishing restrictions. While it drafts the longer-term plan, the agency could take emergency steps for the rest of 1991.

Conservationists will likely continue to push for diverting more water from irrigation and from utilities at the dams. Power companies will probably continue resisting, calling instead for further restrictions on fishing.

Asking What's 'Wild'

Behind the visibly intense political wrangling—but no less significant to any plan for saving the salmon—has been the work of a 33-member scientific panel put together by the marine fisheries service. Their task: Determine, both genetically and geographically, what defines a species of salmon and decide at what point those species become endangered.

Under the language of the Endangered Species Act, Marine Fisheries officials say a distinct fish population in a specific geographic spot is eligible for protection. A precedent was set in 1988 when Marine Fisheries declared a Chinook run on California's Sacramento River endangered, requiring one dam to shut down for two months each year.

Now Marine Fisheries is trying to write more precise rules for classifying a species. The ramifications are enormous.

The salmon's mysterious life cycle brings them back from the sea to their freshwater birthplace to spawn and die. Each tributary of the Columbia, each shady creek, is thought to produce a distinct run that for the most part reproduces only among its own. And each of those runs, in theory, might be eligible for special protection.

Determining whether the spotted owl was endangered was, by comparison, a straightforward task: Researchers came up with estimates of how many breeding pairs existed and at what point the population drops below where the species can continue propagating itself. Salmon present a greater challenge.

Different Strains

Chinook and coho as a whole aren't in danger of disappearing. Millions are being raised in hatcheries or spawning in the cold rivers of Alaska and Canada, even as wild runs have vanished throughout the Columbia Basin. Hatchery-raised salmon from the Umatilla River were recently discovered interbreeding with native stocks that spawn in the Snake, complicating the notion of identifying precise populations.

The challenge is most evident in the Snake River sockeye. By all accounts, the ocean-going sockeye is virtually extinct. Only one is known to have survived the 970-mile journey from the sea to spawning grounds in Idaho's Redfish Lake last year. But its freshwater cousin known as the kokanee, considered virtually a genetic twin of the sockeye, thrives in Idaho's lakes and reservoirs.

Conservationists say preserving the wild salmon left in the Columbia and its tributaries is essential to saving local ecosystems, as well as preserving the strongest genetic strains of salmon. They compare it to the need for preserving genetic diversity among farm animals or domestic crops.

"The importance of genetic diversity in the long term is still very unknown," said Jim Lichatowich, a biologist with the Jamestown Klallam tribe. "But we believe these little wild stocks are the seed banks for future salmon production. If you're going to save the salmon, wild or in hatcheries, you need to save the building blocks."

Who Runs The River

More than 30 agencies—federal, state, public and private—have a say in managing the Columbia River system. There is no central authority, a fact complicating decision-making. Among the agencies:

Northwest Power Planning Council

Created by Congress in 1980, the council is composed of representatives appointed by the governors of Washington, Oregon, Idaho and Montana. The council was originally assigned three tasks: develop a 20-year electrical-power plan to guarantee adequate and reliable energy at the lowest cost; devise ways to "protect, mitigate and enhance" fish and wildlife affected by hydropower development on the Columbia and its tributaries; and encourage public participation in both processes.

Bonneville Power Administration

Created by Congress in 1937, this federal agency is responsible for generating and selling power from the Columbia system's federal hydroelectric dams. Bonneville also must finance efforts to protect, mitigate and enhance fish and wildlife affected by those dams. Its efforts must be consistent with the Northwest power council's programs. Bonneville is wholly financed by Pacific Northwest ratepayers.

Fish And Wildlife Agencies

These state agencies play a central role in policing commercial and sport fish harvests in Washington, Oregon, Idaho and Montana. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service also direct fish and wildlife management policy. The agencies also consider comment on harvest limits and other management efforts from the Northern Pacific Fishery Management Council, the Canada Department of Fisheries and Oceans, the Pacific Salmon Treaty and the Columbia River Compact of 1918.

Indian Tribes

Four tribes have treaty rights to the Columbia's resources and a say in managing them. They are: the Yakima Tribes of Washington; Umatilla Tribes and Warm Springs Tribes of Oregon, and the Nez Perce Tribes of Idaho.

Federal Dam Operators

The U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation are responsible for building and operating most of the Columbia's federal hydro dams, as well as helping minimize fish-run damage caused by power generation and irrigation.

Non-federal Dam Operators

A number of private and publicly owned utilities that have designed and built their own dams on the Columbia system are required by law to pay at least a share of the costs of enhancing fish runs, usually by hatchery production.

Federal Energy Regulatory Commission

FERC, which had its beginnings in the 1920 Federal Water Power Act, is responsible for licensing nonfederal hydro projects, and must consult with other river managers before approving a new project.

Federal, State Land Managers

Because natural-resource development activities, such as logging and mining, rely on cheap power and water supplies but may compromise spawning habitat and water quality, the federal Bureau of Land Management, the National Park Service, the U.S. Forest Service and the natural-resources departments of Washington, Oregon, Idaho and Montana also participate in developing policy and regulations.

The Wealth of the Columbia River Is Dispersed Worldwide

Since early in this century, the number of salmon in the Columbia River has plummeted 85 percent, from 16 to 2.5 million. Of the 2.5 million, an estimated 300,000 are salmon from wild strains; the rest were spawned in hatcheries.

- Commercial and sport fisheries on the Columbia and the Snake are estimated to be $133 million-a-year industry. The Columbia River is the second-largest navigational transportation system in the U.S., after the Mississippi River.

Sixty-Six million tons of cargo were moved on the Columbia and Snake rivers in 1989.

- The Columbia carries a quarter-million cubic feet of water per second to the ocean—enough for every drought-stricken Californian (there are 30 million of them) to drink a glass of water every second.
- Columbia River dams generate enough power to keep 16 Seattle's lit all year-round. Electricity from the hydrosystem lights homes and powers factories as far away as Los Angeles and Salt Lake City.
- Columbia River hydropower helps produce 43 percent of the U.S. aluminum supply, roughly 2 million tons a year. The industry employs about 10,000 people, supplying companies such as Boeing, the world's largest builder of commercial airliners.
- Wheat from irrigated lands is used in Japan, Korea, Taiwan and other Asian countries to make noodles, bread, fortune cookies and other food products.
- The U.S. Army Corps of Engineers barges more than 20 million smolts (juvenile salmon) around the dams each year.
- More than $5 billion worth of crops are produced on 8 million irrigated acres—a desert area roughly twice the size of Kuwait.

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Fishing Industry Calls Itself Victim, Not Cause, of Salmon Shortage — Fishermen on the Line

By Marla Williams
The Seattle Times
April 1, 1991

CHINOOK, Pacific County — There is flooding on the only road through town. The plywood sheets nailed across the windows of failed cafes and tackle shops are tearing loose, flipping end over end until caught in the stone breakwater that separates the town from the Columbia River.

And the hard, slanted rain is driving the fishing boats back in. At the dock, 63-year-old Les Clark gives one last yank on the bowline of his boat, the St. Frances II, and calls it a day. A wasted day: He never left the harbor.

"No point," says Clark, a third-generation Columbia River fisherman. "Only thing worse than the weather is the fishing. Most guys aren't making expenses."

Located within sight of the river's wide mouth, the town of Chinook took its name and purpose from the king of Pacific salmon. Then a practical act, today it seems quixotic: Here along the Columbia, where pioneer fishermen used horses to drag nets bulging with salmon from the river, their descendants are now lucky to haul in a few dozen fish.

A precipitous decline, but hardly sudden. For decades, local fishermen have complained of rapidly dwindling fish stocks and demanded loudly that something be done.

Ironically, an attempt to protect and rebuild depleted salmon runs now threatens to deny the fishermen the income and independence they want.

Within days, U.S. Secretary of Commerce Robert Mosbacher is expected to decide whether to grant the first of five petitions seeking protection of five Columbia salmon runs under the Endangered Species Act.

"We want to save the salmon, but this could close the fishery from Canada to California," says Bob Eaton, president of Salmon For All, an industry group. "It could close entire towns."

If even one run is listed, thousands of other inland and marine strains could become eligible for protection. Countless streams, rivers, lakes and miles of ocean could be posted off-limits for sport and commercial fishing. In some cases boating and other recreational activities could be shut down.

A recent report by the American Fisheries Society notes that at least 76 salmon runs in the Columbia system are in trouble, including nearly half with a high risk of extinction. Based on those figures, the Oregon Natural Resources Council is considering filing petitions to protect as many as 195 salmon runs throughout the West.

A desperate measure for what many believe is a desperate situation.

At the turn of the century, 16 million returning salmon roiled the waters of the Columbia. This year, 2.5 million are expected, barely a ripple.

And most will head for hatcheries. Fisheries specialists estimate fewer than 300,000 wild salmon will swim upriver to spawn in natal streams.

Half the runs of wild salmon are thought to be already extinct on the Columbia and its main tributary, the Snake River. Salmon of legendary size and fight have disappeared without ever being declared threatened or endangered, victims of progress.

Commercial fishermen fear a similar fate. Says Dan Schrader of Hoquiam, "I'm 26 years old and I've already been fishing half my life. I got sea legs—I don't know how far they'll carry me if I'm forced onto the land."

Even if commercial fishermen are not taken off the river by an endangered-species listing, the tide is running against them. Our developing modern ethic that everything wild should be preserved is eroding the long-standing belief that humankind has a right to exploit nature's bounty.

Fishermen fault hydroelectric dams for the declining salmon runs and their failing industry. Hydroelectric development may, in fact, present the greatest menace, but it is by no means the only cause of their trouble.

Beginning with Supreme Court rulings in the 1970s, non-Indian fishermen have been forced to substantially reduce their catch. The controversial 1974 decision of U.S. District Judge George Boldt, which recognized Indians' traditional, spiritual and commercial right to salmon, gave the tribes at least half the fish. Before that ruling -which met with gunfire and bloodshed—tribes caught less than 5 percent.

Since then, regulatory changes have limited the commercial catch even further. Like loggers and miners who live by extracting nature's wealth, fishermen have been under increasing pressure from environmentalists and governments, all of which consider catch limits one sure way of protecting salmon runs.

Since 1975, ocean trollers, who fish with hook and line, have seen their Chinook harvest reduced by 82 percent, their take of coho by 94 percent, according to the Pacific Fishery Management Council, which oversees ocean salmon fishing.

Translated to loss of income, the numbers are equally startling: In 1988, ocean trollers generated close to $62 million in direct and indirect income for Washington and Oregon; in 1989, income dropped to less than $38 million.

Already in trouble, many ocean trollers may go down in the coming year regardless of the Commerce Department's decision. To protect other depressed natural stocks, mainly Hood Canal coho, the Management Council may cut the coho harvest limit in half from last year, to 50,000.

Gill-net fishermen, who cast huge curtain like nets on the river, are also on rough water. Last month, the spring Chinook fishing season was closed a week early, at the height of the run, to preserve salmon headed to the upper Columbia and Snake.

Early counts of Chinook salmon entering the Columbia indicate the spring run is the third- or fourth-lowest of all time: 62,000 are expected to migrate past Bonneville Dam. Less than 5,000 are expected to make it past eight hydroelectric dams to Snake River spawning grounds.

Both Indian and non-Indian Columbia gill-netters produced roughly $49 million in direct and indirect income in 1988; in 1989, revenues were barely $18 million. And the numbers are likely to get worse, whether or not endangered status is granted.

"I'll tell you, it's scary," says Jim Harris, a fish buyer for Jessie's Ilwaco Fish Co. "We don't have a Boeing or a Microsoft. We don't have much of anywhere to work if you don't fish or work in something related to fish. Cut back fishing any more and you cut off life in this town."

A 50-mph wind blasts the public dock at Chinook, rattling the scales at a fish-buying station where David Mandich of Hoquiam, skipper of the Scavenger, is weighing in his catch.

Like most who fish and live in the area, the 32-year-old Mandich was fishing on the river before he could drive on the roads; he was 13. He and his partner, Jim Johnson of Aberdeen, had been out most of the night and all of the morning, but even the brutal weather hadn't dampened their intent to head back to the river as soon as they'd completed their business.

Into the scales they dump the last of 11 spring Chinook—fish the color of tarnished sterling, 3 feet long and well-muscled. Total catch: 220 pounds.

The buyer, who supplies Seattle restaurants and stores, is paying $3.68 a pound. It's a good price, the one advantage of limited supply.

"It's something, no doubt. But I'd rather see more fish coming up this river," Mandich says.

From Astoria, Ore., and Ilwaco, Wash., at the mouth of the Columbia, to the headwaters of the Snake in Yellowstone National Park, commercial and sport fishermen loudly curse the concrete giants—the dams—they blame for ruining the river.

"The thing that killed the fish is the dams," says Mandich, "and now the dams are killing us."

Fishermen, afraid that gill-netters and ocean trollers will get it otherwise, want hydroelectric companies to bear the brunt of any plan to protect and rebuild salmon runs. "If there's a listing, we're all going to have to pay damages," says Les Clark. "And I'm willing to pay my share. But I'll be damned if I'm going to pick up the tab for all the countless millions of fish killed by the dams."

Fishermen want the power brokers to pay for getting more fish around the dams, and they want more water spilled over the dams to help young fish migrate downstream.

The Bonneville Power Administration and the Northwest Public Utilities Conference Committee, representing 4 million electricity users, have responded by urging closure of commercial sockeye fishing for the next two years, a 10 percent reduction in coho catch, and a 65 percent cut for Chinook.

"Certainly, the dams kill fish. But so do fishermen. Don't forget, entire runs were wiped out by fish wheels and unregulated coastal troll and gill-net fisheries," says Jack Robertson, deputy administrator for Bonneville.

Fish wheels began operating on the Columbia in 1879. Giant scoopers that churned the current, they lifted hundreds of salmon with every turn. Far too efficient, the devices were outlawed in 1930, but by then entire runs had already been wiped out.

Coastal trolling, begun in 1912, was a way to hook the fish before they entered the river. Gill-netters figured out how to make setting nets more efficient and hauling them back in easier.

Most gill-netters are third- or fourth-generation fishermen, and what they know about catching salmon is their legacy. Says Clark: "When I was a teen, I started fishing with my dad and he taught me everything his dad had taught him. Later, when my kids got old enough, I began passing the knowledge along. I'd hate to think the most important thing I can leave them is worthless."

If the salmon is listed, many fishermen believe they will be the first group asked to sacrifice.

"I haven't any doubt that it's easier to order fishermen to haul in their nets than it is to tell big hydro-powers to stop generating electricity," says Salmon for All's Eaton.

If commercial fishermen are forced off the river, Eaton says his group may seek restitution. "We're willing to do whatever we can to help but offer ourselves for sacrifice."

The utilities are not the only ones agitating for reduced commercial harvests. Some charter operations and sport fishermen are backing the power providers, saying they would like to see gill-netters off the river.

And at the request of sport fishermen, the Washington and Oregon legislatures have introduced bills that would all but close commercial fishing on the Columbia.

The rivalry between commercial and sport fishermen is long-standing, but with fewer fish to fight over, the struggle is increasingly bitter.

At the confluence of the Willamette and Clackamas rivers, near Oregon City, pulp-mill workers and retired truck drivers have backed 4-by-4s to the banks and cast their hopes upon the water.

Although long ago shackled and forced through irrigation aqueducts and power-generating turbines, the rivers are said to offer outstanding salmon fishing. Close to 110,000 spring Chinook are expected to turn off from the Columbia to follow the flow.

But the fish aren't biting this morning. And the anglers are blaming the gill-netters.

"To me, they are taking too many fish," says Swan Nelson of nearby Portland. "Us sport fishermen, we don't stand a chance."

At the place where the Willamette's swift, clear current meets the slow, muddy Clackamas, a string of small boats, hitched side-by-side, is stretched from bank to bank. This is the "hog line." Sport fishermen in fluorescent orange hats are drinking Budweiser and eating day-old Danish, talking about fish in voices louder than their plaid shirts. At the height of the run, usually mid-April, hundreds of hog lines will bind the river, making it possible to walk across the water in their boats without getting your feet wet.

Before the gill-netter, says Nelson, a person could have walked on the backs of fish.

"But greed has destroyed the run," he says. "Pure greed. The gill-netters are the worst, of course, but hell they ought to kick us all off—everybody—and shut Columbia down. Give the fish a chance and teach us all a lesson, it would."

When pressed, Nelson admits he's not serious. Surely, such a lesson would be difficult for many to survive.

With thousands of West Coast tuna fishermen out of work to save dolphins, thousands more Appalachian coal miners and Rust Belt factory workers idled to save the air, and Northwest loggers unemployed to save the spotted owl, it seems insane to these men that even more livelihoods would be sacrificed to underwrite an untested preservation ethic.

"To me, it doesn't matter if it's a wild fish or a hatchery fish on the end of my line; either way it tastes just as good," says Ed Eby, sport fisherman from Molalla, Ore.

Molalla is a tiny timber town that's just barely making it. A lot of businesses have been forced to close, Eby says, a lot of people forced to move on.

And while he can't think of anything better than fighting salmon with a rod and reel, he believes it will be a mistake to list the salmon as endangered.

"We've got to figure this out, no doubt," he says. "We cannot lose the salmon.

"But we've got to avoid disaster. I'm not sure how to manage it—I only know that if we handle this salmon thing the same way we handled the spotted owl, we'll have a disaster. And folks here cannot handle another disaster."

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Sacrificing for Salmon; Pacific Northwest to Feel Diverse Impact

By Tom Kenworthy, Staff Writer
The Washington Post
January 14, 1992

SKAMOKAWA, Wash. — From this fishing village just upstream from the Pacific Ocean to potato-farming communities hundreds of miles inland in Idaho, almost everybody in the Pacific Northwest has gotten something from the Columbia River system.

Now, in a last-ditch effort to save some of this region's wild salmon runs, almost everybody is going to have to give something back.

For gill-net fisherman Kent Martin, it will mean taking fewer salmon from the fishery that has sustained his family for four generations.

For Brett Wilcox, president of an aluminum company 150 miles upstream in The Dalles, Ore., it will mean paying more for the cheap hydroelectric power gobbled up in huge quantities by his company's smelters.

Farmer Bud Mercer of Prosser, Wash., will face higher costs for irrigating more than 2,000 acres of vegetables growing on desert land that the Columbia's water has enabled Mercer to turn into a fertile garden.

And for grain shipper Joe Stegner, 465 miles inland on the Snake River at Idaho's only "seaport" of Lewiston, it could result in an annual temporary shutdown of barge traffic that links the area to Pacific Rim markets.

The impending sacrifices in behalf of the salmon represent another example of the sweeping power of the federal Endangered Species Act, which has seldom, if ever, been applied to a case affecting so large an area or such a wide range of economic interests. The act already has put large swatches of Northwest timberland off-limits to logging to protect the northern spotted owl, and in the case of salmon it will affect the region's economic lifeline, the Columbia and its main tributary, the Snake.

Improving salmon survival will require a complex mix of habitat improvement, reduction in the numbers of salmon caught and mechanical improvements to a string of federal hydroelectric dams that have fatally interrupted the downstream journey of some salmon from their spawning grounds in Idaho to the ocean.

The most immediate need is more water to speed the salmon's downstream migration. Therein lies the problem for the Northwest, which diverts huge quantities from the Columbia and its tributaries for power generation, agriculture and transport.

The bitter fight between environmentalists and loggers over the spotted owl is not likely to be repeated here. The region has long been preparing for this day and the impact, rather than falling on a single segment of the economy, will be spread widely. Affected industries and groups have largely gotten past the hysterical predictions of doom and gloom and are settling down to the task of solving the problems.

Although they are still quarreling over how the burden will be spread, nearly all the diverse economic interests that will be affected by the effort to save the salmon runs say they are pledged to making the recovery work.

"The salmon issue is orders of magnitude more complicated than the owl," said John D. Carr, executive director of an association of large electricity users, mostly aluminum companies, that buy directly from the Bonneville Power Administration, the federal agency that sells hydroelectric power generated in the Columbia River basin. "The solution will impact every person in the Northwest.... We are committed to a solution."

The specific costs will come into clearer focus in coming months when the National Marine Fisheries Service makes critical decisions on several populations of sockeye and Chinook salmon that migrate to and from the ocean along the Columbia and the Snake, its longest tributary. The service already has declared the nearly extinct Snake River sockeye an endangered species and is expected to determine shortly that two runs of Snake River Chinook also merit protection.

Recovery teams designated by the service must then decide what has to be done to reduce sockeye and Chinook mortality on one of the world's most managed river systems. Under the Endangered Species Act, the service will have broad powers over how other agencies such as the Army Corps of Engineers and Bonneville Power Administration use the Columbia and Snake.

Once a marvel of nature that teemed with uncounted millions of salmon and steelhead trout—fish that divide their lives between fresh and salt water—the Columbia River in the last half-century has been transformed by man into a marvel of human engineering. The river traverses the Northwest for 1,200 miles from its headwaters in British Columbia. Together with its tributaries it drains an area as big as Texas, annually sending millions of acre-feet of water out of the Rockies to the Pacific.

Almost 60 years after the federal government erected the first of a string of hydroelectric dams on the Columbia, the waterway and its main tributaries resemble not so much a river as a series of huge, slow-moving lakes backed up behind massive concrete barriers.

Harnessed by fabled dams such as Bonneville and Grand Coulee and less known but evocatively named installations like Little Goose, Ice Harbor and Lower Monumental, the Columbia system has become the artery that sustains the manufacturing and agricultural economy of the Northwest. It yields torrents of inexpensive electricity exported as far as Southern California and serves as a transportation network throbbing with international and domestic commerce.

But the dams are almost as efficient at killing salmon as they are at producing electricity, irrigated agriculture and inexpensive transport. What used to be a rapid and relatively benign passage to the ocean has become a protracted journey full of hazards for vulnerable young fish.

The upstream migration of adult salmon is not so much the problem, because the fish are aided around the dams by ascending series of pools called fish ladders.

The downstream trip is another matter. The obstacles include the dams' mechanical systems, slack reservoir pools that increase predation, and raised water temperatures. The combination slows the journey so much that many salmon complete their transformation into saltwater creatures while still in fresh water, before reaching the ocean, and perish.

Hundreds of millions of dollars have been spent on hatcheries, turbine intake screens and elaborate schemes to truck and barge migrating fish around the dams. But this has not reversed the decline of those salmon stocks that must get around the eight federal dams on the main stem of the Columbia and lower Snake to get to their spawning habitat deep inside Idaho. Last year, only four Snake River sockeye salmon made it to their spawning grounds 900 miles from the ocean in Idaho's Sawtooth Mountains, and only about 22,000 Snake River spring, summer and fall Chinook made it upstream past the dams.

Fueling anxiety have been proposals advanced by salmon advocates and upstream interests led by Idaho Gov. Cecil D. Andrus (D) to speed salmon migration by drawing down the reservoir pools behind the four lower Snake River dams in eastern Washington during critical periods of the year. Reducing the size of the reservoir pools would increase the velocity of water passing through and speed salmon migration, but it would cut into electricity production, transportation and agricultural use.

Andrus and others argue that an alternative—sending more water through by releases from reservoirs farther upstream behind Idaho's Brownlee and Dworshak dams—is inadequate.

"If you took every drop of water there is upstream," Andrus said, "it is not enough to create the velocity of current it takes to simulate the conditions prior to the dams. Therefore you have to drop those [lower Snake River] reservoirs."

The prospect of deep and extended drawdowns of the lower Snake reservoirs—annual drawdowns could last from four weeks to, at the extreme, six months—has greatly alarmed commercial, agricultural and transportation interests all along the river system.

Take Lewiston, for example. Since completion of the Lower Granite Dam in 1975 opened Idaho to the Pacific Ocean by water, Lewiston has become an increasingly important port for grains and forest products.

The goods are shipped on barges that depend on 14-foot river channels for the trip to Portland and other downriver ports where products bound for export are loaded on ocean-going vessels. It is an efficient and cheap mode of transportation: In just over two days a bushel of grain can be in Portland at a cost of 16 cents. Rail costs twice as much and trucking almost six times as much.

Lewiston's largest employer, the Potlach Corp., illustrates the city's dependence on river transportation. A medium-size forest products company, Potlach is the city's largest employer, with 2,400 workers. The company ships 120,000 tons of paperboard a year by barge down the river for export, most of which ends up as milk cartons in Japan. It draws 35 million gallons of water a day from the Lower Granite Dam pool for its pulp mill.

Reservoir drawdowns, said company spokesman Todd Matlock, could force the Potlach Corp. to pay $150,000 more per month to ship by rail, and another $1 million to modify its water intake.

Downriver worries over the more extreme drawdown scenarios multiply by the mile. Irrigators have fretted that their expensive river pumping stations would be left high and dry. Officials at the Port of Portland say even a foot or two reduction in their 40-foot channel could force huge container vessels to dock elsewhere on the Pacific Coast.

Near the ocean, in Skamokawa, salmon fisherman Kent Martin has a different worry: that the powerful upstream economic and political interests will combine to mitigate the reservoir drawdowns and put the onus on the fishing industry rather than the dams he sees as the real culprit.

The lower Columbia salmon fishery is composed of a mixture of threatened and relatively healthy populations, with the vast majority of the catch coming from hatchery-bred stocks. The few wild Snake River salmon caught, Martin argues, have a negligible impact compared to the mass destruction of salmon at the dams, and further harvest restrictions will only force fishermen to move to Alaska.

"There are still four dams that haven't been screened" to keep fish out of turbine intakes, Martin said. "I see a society which pays all kind of lip service to saving whales and cute little seals and salmon as long as somebody else pays. Well, I'm the somebody else."

Amid all this economic heartburn, the Northwest Power Planning Council, a four-state agency that is belatedly catching up to its 1980 legislative mandate to treat fish equitably with power needs, recently completed a comprehensive salmon recovery blueprint that represents a balancing act among competing interests.

To the consternation of some salmon advocates and the relief of some commercial users of the river, the council has tiptoed around an unequivocal endorsement of the reservoir drawdown strategy. It asserts that a modest version should be in place by 1995 with an escape valve if it proves "structurally or economically infeasible."

The feasibility could be established early this spring, when the Army Corps of Engineers conducts a drawdown experiment. In the meantime, the power planning council's chairman, Ted Hallock, said he believes that his agency's proposals will form the basis of any recovery plan ordered by the National Marine Fisheries Service, and that the economic impact will not be as dire as once thought.

"Many of the protestations of damage have been deliberately inflated," said Hallock, who estimates the cost of salmon recovery at between $200 million and $1 billion over the next five years, with much of it coming from Bonneville Power through electric rate increases of less than 5 percent.

"Ten years from now we should be seeing the first dramatic impacts of the recovery plan," predicted Thane W. Tienson, an attorney for the commercial fishing group Salmon for All. "Everybody here understands that no creature better symbolizes the spirit of the Northwest."

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A Race to Rescue the Salmon

Farmers, Fishermen and Others in the Northwest Will Have to Change Their Ways Under a Federal Plan Being Designed to Save the Region's Cherished Fish

By Jeanne McDowell Chinook
Time
March 2, 1992

For Leslie Clark, 63, salmon fishing was a birthright—a livelihood that has sustained four generations of his family. As a boy he learned from his father and grandfather the art of casting vast gill nets on the teeming waters of the Columbia River. After years of practice, he says, "you understand the fish and his ways. You know what he's going to do before you see him."

In Clark's youth, glistening 27-kg (60-lb.) silver Chinooks and red-fleshed sockeyes would leap into the nets. The commercial salmon season was 137 days long, and a day's catch would often exceed a ton. But now the sockeyes have vanished and the silver Chinooks have dwindled. The season is one-third as long, and Clark and his two sons are lucky if they catch 136 kg (300 lbs.) each day. Soon they may have to quit the business altogether because of a broad effort to rebuild the salmon populations on the lower Columbia and its main tributary, the Snake River. "Everyone who uses the river's water," he says, "is going to have to share the burden and pain."

Last fall the Snake River sockeye was added to the nation's endangered-species list, and this spring the National Marine Fisheries Service is expected to take similar action on behalf of most races of Chinook. These actions pave the way for an extensive salmon-recovery plan to be put forth by the fisheries service in September that will affect not only commercial and sport fishing throughout a four-state area but also mining, farming and other industries that depend on the river and the power it generates. "There is no better barometer of the health of the Northwest than salmon, " says Bill Arthur of the Sierra Club. "If we can bring back the salmon, we can demonstrate that we have learned to manage the natural systems in a way that perpetuates the bounty."

Before the roaring Columbia River began to be tamed by dams 59 years ago, it teemed with 16 million wild salmon a year as it cut a 1,930-km (1,200-mile) swath from its headwaters in British Columbia to its mouth at Astoria, Ore. Today its streams and tributaries are inhabited by only 2.5 million salmon a year, nearly 75% of which are spawned in domestic hatcheries. Logging and grazing on public lands have eroded soils and buried spawning grounds. Delicate habitats have been dried up by the pumping of hundreds of millions of acre-feet of water to grow crops in eastern Oregon, Washington, Idaho and Montana. Over harvesting by commercial fishermen—both on the rivers and in the ocean, where the salmon spend two to five years of their life—has drastically reduced populations of several fish stocks.

But the most ferocious enemy of the fish is eight hydroelectric dams on the lower Columbia and Snake rivers that harness water behind massive walls of concrete. On their journey upstream every year, the salmon are aided by fish ladders that allow them to bypass oncoming currents. But the trip downstream from the spawning grounds to the Pacific is a treacherous 1,450-km (900-mile) journey that obliterates up to 11 million juvenile salmon, called smolts, a year. Slack pools created by reservoirs behind the dams have slowed the smolts' traveling time from seven days to six weeks. This increases their exposure to predators and to higher water temperatures that make them susceptible to disease. The combination can be fatal, throwing off the delicate biological clock that allows the salmon to adapt miraculously from fresh to salt water once they get to the sea. The smolts that survive face a grisly threat: the majority end up ground to a pulp in the deadly turbines that create the cheapest electricity in the country.

Saving the salmon will require a far-reaching plan to restore habitat, reduce the number of commercial fish harvests and limit the number of hatchery salmon released in the river. But the crucial element will be changing operations at the dams to increase the velocity of the waters so that young fish are quickly flushed seaward. Biologists say this can be achieved by releasing vast amounts of water from upstream reservoirs or by lowering water levels in the pools behind the dams during the spring migration.

While the Endangered Species Act has given a sense of urgency to the salmon's plight, a number of efforts have already been made to increase the runs. In 1980, Congress passed the Northwest Power Act, which required federal power authorities, who oversee the dams, to give salmon protection equal priority with electricity production. The act also created the four-state Northwest Power Planning Council, which aimed to double the number of salmon to 5 million to make up for those lost in the dams. To meet this goal, the council established fish hatcheries and installed screening devices at many dams to prevent smolts from being sucked into the turbines. The council has also ordered barges to transport smolts around the dams and has increased the flows by releasing water from storage reservoirs.

But 12 years and a billion regional dollars spent on such efforts have failed to rebuild or even stabilize the salmon populations. Optimism about hatchery technology has waned, and many scientists now believe that domesticated salmon lack the genetic robustness of wild ones. Environmentalists complain that the planning council is too weak to take on the utilities that have dominated the river for decades. "The fish got what utilities were willing to give them," says Bill Bakke, of the Oregon Trout, a fish-conservation group. Instead of doubling, the number of salmon has continued to decline steadily.

The forthcoming plan from the National Marine Fisheries Service is likely to be much stricter in requiring increased water flows at the dams. Farmers, manufacturers and utilities are worrying about the consequences. In Lewiston, a port 748 km (465 miles) inland on the Snake River in Idaho, port director Ron McMurray says barge traffic may be halted several months a year, forcing farmers to transport cargo by rail or truck. Ron Reimann, who farms 1,295 hectares (3,200 acres) in Pasco, Wash., estimates that it will cost him $1.3 million if he has to move his irrigation pumps to accommodate lower water levels. In addition, electricity rates are expected to rise as much as 8% because of the decreased efficiency of the hydroelectric plants. Aluminum manufacturers, lured to the region by cheap energy, could be hit, as well as the small towns they support.

Officials at the fisheries service insist that the recovery plan will spread the burden among all the divergent interests, but a power struggle is already under way. "Fish advocates" blame the Army Corps of Engineers, which runs the dams, for not assuming responsibility for the diminished salmon runs. Idaho farmers, on the other hand, want to protect their water-guzzling crops. Meanwhile, four Native American tribes are sure to go to court if their rights to half of all fish in the Columbia River basin are taken away.

Even so, the battle to save the salmon has generated far less rancor than the struggle between environmentalists and loggers over the northern spotted owl. In addition to its contribution to the Northwest economy—$52 million a year in commercial fishing-related income alone—the salmon has deep-seated symbolic value. Names of towns such as Chinook and White Salmon reflect the place of the cherished fish in the region's soul. In religious ceremonies, Native American tribes thank their Creator for the life-perpetuating salmon.

Salmon lovers call completion of Grand Coulee Dam in 1941 one of the darkest moments for the fish. As 27-kg (60-lb.) "June hogs" made their summer migration upstream that year, following their unwavering instinct to return to the streams where they were born, thousands perished when they flung themselves against the unyielding concrete. But even the staunchest fish advocates realize that the June hogs are gone forever and the dams are here to stay. Biologists are optimistic, however, that a strong recovery plan can bring other salmon species back from the brink within 20 years. Leslie Clark, the third-generation gill netter, is willing to put his beloved livelihood on hold to achieve that end. "Fishing has been good to us," he says. "But watching these fantastic fish go down to little or nothing has been very sad. If you depend on a resource, you've got to take care of it."

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Northwest Battles Decline in Salmon Stocks

By Samuel Perry
Reuters
April 25, 1992

PORT ANGELES, Wash. — The Pacific Northwest, already in an uproar in a dispute between environmentalists and loggers over protection of the northern spotted owl, faces a new wrangle over how to save threatened salmon species.

Last week, the National Marine Fisheries Service listed the spring, summer and fall runs of the Snake River Chinook as threatened under the Endangered Species Act, adding these to the Snake River sockeye listed last year.

The service withheld its most urgent listing, which would label the species' survival in jeopardy and require immediate action to protect it, but the ruling will inevitably result in more costly electric power for the region.

Dams that produce the cheap electricity block the salmon spawning routes and an area once teeming with fish has for decades been wondering how to keep the fish alive and at the same time provide hydroelectric energy.

Now, with the listing of the Chinook, the issue may be reaching a climax.

"The changes will cause wholesale power rate to rise four to eight percent. That translates to a retail price jump of 2 to 4 percent," said Sharon Blaire, spokeswoman for the Bonneville Power Association.

The BPA is the federal agency in charge of the huge dams—the greatest of which stand some 50 stories tall—along the Columbia and Snake Rivers.

Since 1933, three dozen major dams were built on the river system, which winds for hundreds of miles from Canada through Washington, Oregon and Idaho

About 70 percent of the region's low-cost electricity is produced by these dams, which also power nearly half the U.S. aluminum smelter capacity.

But up to 97 percent of the young salmon headed downstream and 50 percent of adult fish from the ocean are chewed up by the dams' huge turbines.

Rivers that once sustained runs of 16 million wild salmon now support just 300,000 salmon. Around two million hatchery-bred fish also survive.

Economists think the needs of the salmon are likely to produce measures far more severe than those protecting the spotted owl, which have tied up federal timber harvests and are blamed for loss of thousands of jobs.

Ten years ago Congress ordered the utilities that use the electricity generated by the dams to come up with a plan to save the fish, but after spending $1 billion, the runs have dropped.

The decrease is so steep, a federal panel earlier this month recommended a sharp reduction in the amount of salmon commercial and sport fisherman can catch in the ocean off the coast.

Another response is to allow more water to spill over the top of the dams, away from the killer turbines, and managers of dams in the upper Snake are allowing an additional 400,000 acre-feet of water to flow freely.

But environmentalists say these measures fall far short.

"You've got to have more water moving faster," said Katherine Ransel, an attorney with American Rivers, a national river conservation group.

This month, American Rivers ranked the Columbia and Snake rivers and the Elwha River on the Olympic Peninsula at the top of its endangered list due to the loss of salmon runs.

A drastic solution would be to tear down the dams and Congress is weighing legislation that would remove two small hydroelectric dams on the Elwha.

A unit of Daishowa Paper Manufacturing of Japan is the only customer for the dams' electricity. The company, which is the largest employer on the Olympic Peninsula, backs the plan as long as it can get power at a similar cost from elsewhere.

Supporters of the bill estimate that up to 400,000 salmon could return to the pristine rainforest watershed. It would be the first river to have dams removed solely to save salmon.

But no one at the moment is seriously suggesting the elimination of the mighty dams on the Columbia and Snake that hailed as monuments.

Even the power that would replace what is currently produced on the Elwha would come from these dams. All agree, however, that the region will feel the pinch of higher costs as authorities seek to avert the extinction of the salmon.

"It will affect all water users of the Columbia and Snake systems, whether you're an irrigator or someone who turns on a power switch," said Rolland Schmitten, regional director of the National Marine Fisheries Service.

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Water Wars — Will Draining Reservoirs Save the Salmon But Destroy a Way of Life?

By Bill Dietrich
The Seattle Times
March 29, 1992

LOWER GRANITE DAM, Whitman County — You've heard of owls and old growth vs. lumber and jobs. Now comes salmon vs. bread.

On Tuesday, the Army Corps of Engineers will end a month long experiment that partly drained two Snake River dam reservoirs to eventually help migrating fish in southeastern Washington.

But even some biologists are dubious about the drawdown's effectiveness, and its harm to barge traffic and boating has upset locals ranging from wheat exporters to recreationists.

"I think this is just completely nuts," said Mick Wiener, a Lewiston, Idaho, schoolteacher who viewed what has been a lake used for water skiing briefly transformed into the free-flowing Snake and Clearwater rivers, cutting across gray pans of mud.

"This has been a financial disaster for us," said Bob Gilchrist, whose 2-year-old Red Wolf marina sustained what he estimated at $100,000 in dock damage and $40,000 in lost business when its water drained away, with both his insurer and the government refusing to promise compensation.

The four-week test that dropped reservoir levels as much as 37 feet halted commercial barge traffic used to export wheat, ruptured floating docks, marooned swimming beaches, dried out a golf course, cracked a county road and killed unknown quantities of fresh water mussels, clams, bass, carp and catfish.

"How many other species are we going to destroy to save these salmon?" groused Rick Davis, the manager of the Port of Clarkston who lost the pilings to a new tourboat dock when the bank slumped.

The drawdown also revealed two dead bodies, scraps of junk ranging from a cash box to a pop machine to a John Deere farm tractor to a drowned 1979 Cadillac that a frustrated teenager drove into the water after an argument with his girlfriend on Christmas Day 1990.

After David Brockman of Clarkston came forward to claim the car, he was ticketed for creating a public nuisance and blocking passage in a public waterway.

The bodies were of Edward Bear of Lapwai, Idaho, an apparent 1988 murder victim, and James Scott Beck of Bellevue, whose boat capsized on a hunting trip in November.

Whether the experiment is a partial solution to the alarming decline of Pacific Northwest salmon will likely be hotly disputed until at least November 1994.

That is when wildlife and energy officials are to make a final decision on whether to make these drawdowns an annual event, lasting from two to six months, in hopes of hurrying young salmon to the sea.

Owl-Like Issue

Some argue that lowering dam reservoirs to create more current to push salmon downstream is long overdue.

While this struggle is reminiscent of that over the northern spotted owl, the salmon crisis probably tugs harder on popular emotions because while few people have ever seen the reclusive owl, salmon are a common, revered and coveted symbol of the Pacific Northwest.

With runs in such poor shape that officials have proposed shutting down all salmon fishing this year from Mexico to Canada, the fish have become a particularly embarrassing example of environmental decay.

"We can't get the fish through the reservoirs without a current," said Ed Chaney, director of Idaho's Northwest Resource Information Center, an environmental group. "Draw the reservoirs down, and you get current. There simply is no other way."

Too Long to the Sea

Biologists believe one reason salmon runs are declining is that young smolts take too long to get to the sea and die of starvation, disease or get eaten. Rivers penned behind dams move up to 15 times slower than the flow the salmon evolved to.

"What Idaho wants to do is get the Snake-Columbia corridor to more closely resemble a free-flowing river," summed up Dexter Pitman of the Idaho Department of Fish and Game.

Yet playing yo-yo with the level of the Snake and Columbia could cost hundreds of millions or even billions of dollars, critics charge, with no guarantee it will do endangered salmon runs any good.

Lowering reservoirs forces expensive modifications to dams and irrigation systems and spills water that might otherwise be used to generate electricity, or water crops.

Forcing river traffic onto rail could add 80 cents to a bushel of wheat, they complain, and jeopardize agricultural export markets.

Avoiding the 'Bends'

So risky is a drawdown biologically that fish scientists insisted this first test occur during March, when few salmon are migrating up or down.

They feared that spilling extra water in spectacular dam waterfalls might do more harm than good by driving air into the water and giving fish a version of the bends, a fatal infusion of nitrogen.

Ironically, lowering the reservoirs to push juvenile salmon to the sea also leaves high and dry the fish-ladder system that adult salmon traveling the other way need to pass the dams.

Accordingly, biologists are unlikely to ever permit a test when salmon are actually migrating, because it would doom adult runs unless fish ladders were rebuilt.

Instead, some propose the Snake River dam fish-ladder system be modified first to accommodate lower water levels—at a probable cost of hundreds of millions of dollars—and then begin the drawdowns in hopes they will work.

"Either we spend a lot of money to rebuild the dams and hope it helps, or we do nothing," said Dave Hurson, an Army Corps biologist. "We don't have ironclad data ahead of time on what the benefit is."

Illustrating the complicated dilemma last Sunday was Glen Lindeman of Pullman, editor of the Washington State University Press. He was racing across newly uncovered Snake River mud flats to carry stranded catfish and carp down to the shrinking reservoir.

While Lindeman sympathized with the attempt to help struggling salmon, he pointed out that turning a reservoir back into a river has environmental consequences of its own, from stranding muddy mussels to drying out estuary wetlands used by birds.

Doug Pineo, a shorelines specialist with the state Department of Ecology, agreed. "I'm of two minds on this," Pineo said. "I want to help the salmon, but there's nothing but question marks all over this on what it is doing to shorelines."

The Army Corps of Engineers, meanwhile, is reluctant to remodel its dams and doggedly defends its practice of barging salmon downstream to speed their way to the sea—even though that program has failed to reverse salmon declines, for reasons that are still a biological mystery.

No one denies salmon are in trouble. The runs on the Columbia-Snake system have declined from up to 16 million fish in 1900 to 2.5 million today, most of the survivors being artificially planted hatchery fish. With some Idaho runs pushed nearly to extinction and given protection under the Endangered Species Act, the federal government is scrambling to reverse the decline.

There is unanimous agreement that dams share a large share of responsibility for the salmon plight, along with over fishing, pollution, logging, irrigation, development, mismanaged hatchery programs and other sins.

Yet what was evident from this test is just how complicated doing dam damage can be. Cost estimates of a modified system, including altering the structure of dams, range from the state of Idaho's $ 300 million to the $ 4 billion cited by Bruce Lovelin, representing Northwest irrigators.

For the Snake River reservoirs alone, the Army Corps estimates that speeding up the current would cost from $ 34 million to $ 40 million for every day shaved off the normal three-week period it takes a drop of water to reach the lower Columbia. The faster the current, the less water that can be stored to run turbines, float wheat barges and irrigate food.

An Andrus Brainchild

Idaho Gov. Cecil Andrus's office proposed the drawdown experiment and is its defender. The water lost is in Washington and Oregon, and the salmon gained will spawn primarily in Idaho.

But Andrus is opposed to a suggested alternative: draining water from Idaho reservoirs to speed the flow through Washington and Oregon. When it comes time to pay the bill for saving salmon, everyone wants another party to pick up the tab first.

"Anytime you move water around, people are going to get upset," noted Jim Hackett, a corps spokesman on the drawdown experiment.

Lower Granite Dam is a spectacular structure overwhelmed by an even more spectacular setting, the 2,000-foot-deep Grand Canyon of the Snake River south of Colfax and Pullman.

The steep lava buttes are little changed since the days Lewis and Clark drifted by, but the dam locks operate 1,500 times a year for thriving river traffic, which ranges from wheat barges to small cruise ships. Grain from as far away as Indiana is barged through for export to Asia.

The dam is normally an out-of-the-way and quiet place, water pushing its turbine blades to crank out almost enough electricity to power the city of Seattle.

Scarcely a drop is wasted over the spillway.

Glimpse of Hidden Power

But Lower Granite was roaring last week. The drawdown made visible its hidden power, releasing reservoir water down the face of the dam in a thundering cataract. Seven white plumes bounced off the spillway lip and arched forward like the necks of plunging stallions.

The air throbbed with sound and filled with mist, and the river churned with whitecaps for miles downstream.

Bobbing in the turbulence was corps biologist Sarah Wick, using a jetboat to sample how much air was being rammed into the water by the artificial falls.

She said the dissolved nitrogen was disturbingly high. That problem might be corrected by modifying the spillway, but "no part of this is simple," she said.

Lower Granite is the first dam that Snake River salmon encounter on their way to the Pacific.

Spawned primarily in Idaho, the fish begin their downstream migration at a size of three to five inches, traveling tail first and being carried by the river current until they reach the dam reservoir.

They then swim to the dam. By that time, an estimated 30 to 50 percent of those hatched are already gone: eaten, diseased, killed by harsh winters or low water.

A Lift From the Corps

Were the salmon to continue swimming on their own through the seven slack-water dam reservoirs still between them and the ocean, few would ever make it to saltwater before their bodies were past the point they could adapt to the sea.

Accordingly, the Army Corps has been giving them a lift.

About 70 percent of the young salmon reaching the dam are diverted by a fish screen into a complex series of slots, passages and pipes to waiting barges.

This traumatic roller-coaster trip kills only about 2 percent outright, and the remainder are barged and released below Bonneville Dam, about 100 miles from the sea. They travel in three days what otherwise would take weeks.

The other 30 percent pass through the dam turbines, about a tenth of these killed by the spin. Survivors swim on to Little Goose Dam, where again the bulk of those arriving are captured and barged.

Millions of salmon get this taxi service.

Once discharged, however, the fate of these salmon is a mystery. Disturbingly few adults return.

"We don't know what happens to the fish deposited below Bonneville," said Jim Ruff, a biologist who represents the Northwest Power Planning Council on the drawdown experiment. "If we are barging so many, why aren't we getting returns?"

Mystery Hoax

The Northwest Resource Information Center's Chaney and other environmentalists suspect the fish are traumatized, diseased and disoriented by this cab ride.

"The more we barge, the fewer we get back," he said. "It's become a hoax."

He argues that barging is just one more artificial tactic—on top of stagnant reservoirs, awkward fish ladders, inferior hatchery fish and so on that ignores how salmon evolved.

The closer the dam system can come to natural flows, Chaney contends, the healthier fish runs will be. But the Army Corps dams and reservoirs were never designed for low-water operation.

"This test is identifying some major problems," said Mark Lindgren, chief of the Corps' hydrologic design section.

A Host of Problems

Pumping the river full of deadly nitrogen and blocking passage to returning adults are just two of the problems drawdowns pose.

None is unsolvable, but together they help explain the lack of enthusiasm for this strategy in southeastern Washington:

- The labor and equipment required to lower the reservoir and monitor the effects have cost the corps $ 3 million in four weeks; the lost power from spilling water over the dam instead of running it through the turbines cost $ 2 million to $ 3 million more.
- Lower water changes pressure on the turbines, making them less efficient and the shaft more prone to vibration. It also makes it more difficult to pump enough cooling water around the turbines to control the temperature of their oil.
- Spilling water creates a vortex at the base of the dam that sucks rocks up to 2 feet in diameter from the river bed back onto a concrete basin, where they bounce and pit the dam concrete. "It runs like a blender," said Charles Krahenbuhl, the corps' project manager.

Engineers are calculating whether regular drawdowns would produce enough hammering to seriously damage the dam, or how such damage could be avoided. The reservoir banks have been saturated with water since Lower Granite Dam was completed in 1975. When emptied, the pressure in them changes.

While the result has not been as disastrous as some feared, it has produced about $100,000 in damage in one highway, caused dock piling to pull away and floating docks to buckle and has created erosion where creeks cut new channels in the exposed silt.

The Port of Clarkston's Davis put damage to his port alone at $70,000, compared with an annual operating budget of only $150,000.

No Compensation

Neither the corps nor any other federal agency is offering any compensation for the damages, at least not at this point. The Northwest congressional delegation may seek aid, however.

- The biological effect is not being intensely studied but at the very least it seems mixed. Don Weitkamp of Bellevue's Parametrix consulting firm examined the drawdown for irrigators and warned it could reduce the number of insects the fish feed on, desiccate wetlands, and possibly make the fish screens that keep salmon out of the turbines less effective because the water velocity changes.
- Recreation has been temporarily disrupted. Areas like Chief Timothy State Park west of Clarkston have become islands in a sea of mud. Pleasure boats have had to be pulled from reservoir marinas and small cruise ships that call from Portland are blocked as long as the drawdown continues.

Chaney said such objections are minor compared with the possibility of losing Pacific Northwest salmon.

Opponents "are suckering people who don't know any better," he complained.

"What we're doing here is routine in most of the reservoirs in the United States, which draw down every year."

"We don't think this year's experiment is showing any benefit for the fish," counters Michael Alesko, who represents an industry group called the Columbia River Alliance.

"There's been a significant kill of game fish."

Pitman of Idaho Fish and Game argues that the test was nonetheless worth it. The damage caused this March, he reasoned, is more than balanced by the knowledge gained to design a long-range solution.

"It's going to provide useful information for the region to make difficult decision about recovering our stocks of salmon," he said.

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LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Salmon Summit

Lesson 3

Objectives

- Students will identify and become familiar with laws that affect Pacific Northwest salmon.
- Students will identify agencies with a role in the salmon controversy.

Materials

Copies of handout "Laws Relating to Salmon Survival"

Time Required

1 to 2 class periods.

Procedures

■ **Tell students** that you will be reviewing laws with them that are available to help advocates of salmon restoration. Tell them that later they will play a game to test their knowledge. One of the laws is the Endangered Species Act (ESA). Another is the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act.) Finally, you will discuss Indian treaty rights and how they play a role in the salmon issue.

■ **First we will discuss** the ESA. Pass out the handout on the laws and treaty rights. Ask students to read the first paragraph, a statement made by Representative John D. Dingell when the ESA was originally passed by Congress in 1973.

■ **Ask students** what they think Rep. Dingell meant by a "library of books still unread?" Tell students that probably the most dramatic and well-known example of the power of the ESA before the spotted owl and salmon issues was the snail darter, a tiny three-inch brown fish that almost stopped a $104 million dam in Tennessee. Scientists said that the fish would become extinct if the dam were built. When the Tennessee Valley Authority argued that its dam was far more important than a tiny fish, the U.S. Supreme Court disagreed, and said that the ESA was clear in stating that endangered species have the "highest of priorities." [*Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978). The dam was actually built after Senator Howard Baker managed to exempt the dam from the ESA. Snail darters were later found in other locations.]

■ **Ask students** to read the rest of the handout and then to work in groups of 4 to 5 to become familiar with the information and to describe the role of each federal agency listed at the end of the handout. Point them to the newspaper articles in Lesson 2, particularly the March 31, 1991, *Seattle Times* article "Lifestyles, Livelihoods..." Remind them that you will be playing a game after they have completed the handout and reading, and that everyone on the team should be familiar with the information. Encourage them to develop their own strategies for how to learn the material.

■ **Give students** at least 30 minutes, or longer, depending on the level of your class. Then introduce the game, a modified version of Jeopardy. You may wish to reconfigure the groups by asking students to number off 1-5 within their group, and then put all "1's" together, etc.

■ **Tell students** you will be asking a series of questions about the agencies and laws that are involved with the salmon issue. Each group will send one person at a time to the board. You will read a question, pause briefly, and then say "Go." The first person to write the correct answer to your question on the board will win a point for their team. If there is a tie, each team gets a point. A new person from each group will go to the board for each question. Everyone should have an opportunity to go to the board at least once. If no one gets the answer, a new set of people from each team will go the board and try. The team is not allowed to help their team member at the board. After all questions have been read and answered, the team with the most points wins.

The questions and answers are:

1. This agency, part of the Department of Commerce, is responsible for deciding whether marine species should be listed as endangered or threatened.

   National Marine Fisheries Service (NMFS).

2. The Endangered Species Act was passed in what year?

   1973.

3. True or False: The agency deciding whether to list a marine species as endangered or threatened may consider economic factors in its decision.

   False.

4. Name one species of Northwest salmon listed as threatened or endangered.

   Snake River sockeye, Snake River Chinook.

5. Fill in the blank: Forty three percent of the nation's ____________ is produced with Columbia River hydropower.

   Aluminum.

6. Who funds the activities of the Northwest Power Planning Council?

   Bonneville Power consumers of electricity.

7. Name the federal agency responsible for selling power from the federal dams on the Columbia River.

   Bonneville Power Administration.

8. Name two Indian tribes with treaty rights to fish in the Columbia River.

   Yakima, Umatilla, Warm Springs, and Nez Perce.

9. Name one federal agency responsible for building and operating the federal dams on the Columbia River?

   Army Corps of Engineers, U.S. Bureau of Reclamation, or the Federal Energy Regulatory Commission.

10. According to the Northwest Power Planning Act, how should fish and

wildlife be treated in comparison with the generation of power?

Equally, or "on a par."

Information for Teachers About Agencies

The Department of Commerce, National Marine Fisheries Service (NMFS) — The NMFS, part of the Dept. of Commerce, is the agency primarily responsible for marine species under the ESA. For example, NMFS, acting for the Secretary of Commerce, is responsible for deciding whether to list salmon as endangered species, designating the critical habitat after listing, and coming up with a recovery plan for the salmon. The primary concern of NMFS is determining the biological needs of Pacific salmon.

Bonneville Power Administration — The agency responsible for marketing power produced by dams owned by the federal government. BPA also finances efforts to protect and enhance fish and wildlife affected by its dams, through ratepayers.

Department of the Interior, U.S. Fish and Wildlife Service (FWS) — The FWS, under the Dept. of the Interior is the agency responsible for terrestrial and freshwater species under the ESA. The Fish and Wildlife Service also helps manage habitat for fish and wildlife in the Columbia Basin.

Army Corps of Engineers, Department of Army — The agency responsible for building, operating and maintaining most of the federal dams along the Columbia and Snake Rivers. (Other federal dams are operated by either the Bureau of Reclamation, which operates storage dams such as the Grand Coulee Dam, or the Federal Energy Regulatory Commission, which regulates nonfederal dams).

Northwest Power Planning Council — The agency created by the Northwest Power Planning Act, composed of representatives from Washington, Oregon, Idaho and Montana. The Council is charged with coming up with a plan to guarantee adequate power for the Northwest, protect fish and wildlife, and encourage public participation in both processes.

Laws Relating to Salmon Survival

The Endangered Species Act (ESA)
Representative John D. Dingell led the movement to pass the ESA. When it was originally passed by Congress in 1973, he said:

"Living plants and animals have, through the centuries, developed a means of coping with disease, drought, predation and a myriad of other threats. Understanding how they do so enables us to improve the pest and drought resistance of our crops, discover new medicines for the conquest of disease and make other advances vital to our welfare. Living wild species are like a library of books still unread. Our heedless destruction of them is akin to burning that library without ever having read its books. The Endangered Species Act is the means by which we seek to avoid complicity in that senseless destruction."

- **Why is it important to protect species from extinction?**

  "Endangered species" is defined in the Act as "any species which is in danger of extinction throughout all or a significant portion of its range." "Threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

  More than 1000 species of plants, animals and fish have been listed under the Act since it was passed in 1973. Prior to the northern spotted owl, probably the most infamous species listed in the last few years was the snail darter, a tiny fish that delayed construction of the Tellico Dam in Tennessee for two years in the late 1970s.

  Other species that have been listed as endangered or threatened under the Act include the bald eagle, peregrine falcon, sea otter, gray wolf, red wolf, condor, grizzly bear, Florida panther, black footed ferret, and whooping crane.

  Genetic diversity is the major rationale for saving species from extinction. The diversity of species is a potential resource to the planet. As the U.S. Supreme Court stated in the snail darter case, these species are "keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask." There are many medical applications of chemicals derived from animals and plants, including anti-cancer agents, antibiotics, antiviral agents, anticoagulants, contraceptives, and antivenoms.

The importance of maintaining natural genetic variation was recognized by Congress in passing this law. When Congress passed the Endangered Species Act it cited the rising extinction rate in the U.S. and the world. At the time the law was passed in 1973, the extinction rate was thought to be one species per year. In 1979, the rate was estimated to be one species per day. Recently, one expert predicted the future rate of extinction to be one hundred species of plants and animals per day. [Linden, "The Death of Birth," *Time*, Jan. 2, 1989, p. 32.]

- **How do we decide what species should be listed as endangered or threatened?**

The process of listing certain species as threatened or endangered under the Endangered Species Act begins with either a private petition submitted by anyone or by the Secretary of the Interior or the Secretary of Commerce. It is the Secretary's (of Commerce for marine species, of the Interior for terrestrial and freshwater species) job to review any petition and decide if a species is threatened for one of the following reasons:

1. Habitat destruction
2. Over-utilization
3. Disease or predation, or
4. Other natural or man-made factors.

Which of those factors do you think apply to salmon?

Indian tribes and environmental groups filed petitions to list Snake River Chinook and sockeye salmon as threatened or endangered. The Snake River sockeye was listed as endangered in November 1991. Two runs of Snake River wild Chinook salmon were listed as threatened by the National Marine Fisheries Service in April 1992.

The Secretary is not allowed to consider economic factors in deciding whether to list a species. The decision must be made "solely" on the basis of the best scientific data available. Once a species is identified as threatened or endangered, the next step is deciding what the species' "critical habitat" is. Critical habitat is the area necessary for the species to survive. The designation of the critical habitat *may* take economics into account.

- **What happens after listing?**

  Once a species is listed, the ESA forbids:

  1. The taking of any endangered species;
  2. Any commerce or sale of an endangered species; and
  3. Any federal action that might jeopardize its continued existence.

  The most important of these for salmon are #1, the "taking" clause, and #3, the "no jeopardy" clause.

  The ESA defines "taking" as including to "harm, harass, ... kill, ... capture, or collect." An endangered species is "harmed" if its habitat is adversely modified. The prohibition includes almost everyone: federal agencies, state governments, corporations, and individuals. There are ways to get exceptions, though.

  All federal agencies are required to make sure that any action they take, fund or authorize will not jeopardize the continued existence of an endangered or threatened species, or destroy the critical habitat of such a species. (Called the "no-jeopardy" clause.)

  Exemptions from the no jeopardy clause can only come from the Endangered Species Committee. This seven member Committee, nicknamed the "God Squad," may vote to grant an exemption to any federal agency. The vote must be by at least five members, voting in person. To make such an exception, the Committee must find that the benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species.

  The Committee must also show that the action is one of regional or national significance and that reasonable mitigation and enhancement measures, such as moving the species or live propagation, have been taken.

- **Can you think of a situation in which you would grant such an exemption regarding the salmon? Why or why not?**

Northwest Power Planning Act

This Act was passed by Congress in 1980. The Act provides that Columbia Basin fish and wildlife must be treated "on a par" with other river uses, including generation of power. The law created the Northwest Power Planning Council. This agency includes representatives from the states of Washington, Oregon, Montana and Idaho. Its job is to find ways to both provide an adequate power supply for the Northwest and protect the fish and wildlife that depend on the rivers and streams that provide the power.

The Northwest depends on hydropower more than any other region of the country. More than seventy percent of our electricity comes from the more than 150 dams on Northwest rivers and streams. Cheap federal hydropower also allowed the Northwest to attract a huge aluminum industry that relies heavily on electric power. Forty three percent of the nation's aluminum is produced with Columbia River hydropower.

The same dams harmed a major resource of the Northwest: the salmon runs. Grand Coulee, Hells Canyon, and Pelton dams block about a third of the habitat that fish used to use for spawning. Congress recognized this as early as 1937, when Congress asked for an assessment of how the Bonneville Dam was affecting the fish runs.

It was not until 1980, however, that Congress passed this law to protect the fish and wildlife in the rivers and streams that had been dammed. The most important provisions of the Act are:

1. It calls for a regional approach to saving Columbia Basin fish and wildlife, with representatives on the Council from Washington, Oregon, Montana and Idaho.
2. The Act recognizes Indian tribes as equal to state fish and wildlife agencies.
3. It authorized changes in operations to help protect wildlife.
4. It lowered the standard for taking actions to protect wildlife from scientific certainty to "the best available scientific knowledge"; it states that biological outcomes must be considered over economic ones; and it requires that the Council defer to the recommendations of agencies and Indian tribes with fish and wildlife expertise.

The activities of the Council are funded by BPA power consumers.

The Act is not clear, however, regarding what the Council's enforcement powers are in relation to the operators of the dams along the Columbia Basin.

This includes the Bonneville Power Administration and the U.S. Army Corps of Engineers. This affects whether the Council's plans to protect the fish are followed by the dam operators.

Since 1982, the Council has come out with a series of plans to restore the fish runs. The plans have been amended every few years and now the Council's approach is broader and system wide. The Council determined in 1987 that 80% of the damage to anadromous fish runs were caused by the dams.

[Information derived from Blumm, M. and A. Simrin, "Unraveling of the Promise," 21 Env. Law 657 (1991); and K. Lee "Rebuilding Confidence: Salmon, Science, and Law in the Columbia Basin," 21 Env. Law 745 (1991).]

Indian Treaty Rights

Another legal issue involved in the salmon controversy is Indian treaty fishing rights. In the 1850s, Indian tribes including the Yakima, Umatilla, Warm Springs, and Nez Perce, signed treaties with Governor Isaac Stevens of the Washington Territory. The tribes traded their rights to over sixty-four million acres of land for the right to retain reserved areas (reservations) and to reserve the right to fish on those reservations and at their usual places. The treaties guaranteed the tribes the right to "take fish" at all their "usual and accustomed stations in common with citizens of the United States."

This right has been interpreted by many federal courts over the years. Probably the most famous case, *United States v. Washington*, known as the Boldt decision, interpreted this phrase to mean that the tribes have a right to take fifty percent of all fish at all "usual and accustomed" places, whether on their reservations or off their reservations.

The Supreme Court has ruled that the purpose of the right to take fish is to supply the tribes with a "livelihood—that is to say, a moderate living." If the tribes cannot sustain a living on the remaining fish, they have asserted the right to bring a lawsuit against the hydroelectric power plants to ensure enough fish for their survival, under their treaty rights. In March 1992, the Yakima Nation sued the Northwest Power Planning Council, alleging a violation of their treaty rights because there are not enough fish to sustain them.

What Agencies Are Involved in Enforcing These Laws?

More than 30 agencies —both state and federal, and some private groups—have a say in managing the Columbia River system. Some of them are:

- The Department of Commerce, National Marine Fisheries Service
- Department of the Interior, Fish and Wildlife Service
- Bonneville Power Administration
- Army Corps of Engineers
- Northwest Power Planning Council

After reading the newspaper and magazine articles, decide what role each agency plays in the struggle to save the salmon. Write a description of each agency's role under its name.

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
KINESTHETIC

Salmon Summit

Lesson 4

Objectives

- Students will select a role they are interested in playing.
- Working individually or in pairs, students will investigate in-depth the motivation, point of view, and suggested solutions to the problem of assuring the return of the salmon to Northwest waters.

Materials

- List of roles.
- "B" newspaper articles. (Up to 15 readings illustrating different points of view—enough copies so that each student has a set.)

Time Required

2 to 3 class periods

Prior to the Lesson

- There are twenty separate roles suggested, representing groups that have a vested interest in the survival of salmon runs and how that recovery is staged. The asterisk by a role indicates that the material is "meaty" enough to keep two students engaged (30 roles in all if a few are doubled). Lack of an asterisk indicates that one student could handle the role independently. Determine which roles you'll want to be sure to have portrayed. Decide how you will manage role selection.
- Copy the readings and roles.

Procedures

■ **Tell students** they are going to add to the research you have done in class so far. Today they are going to be reading from 15 different articles (or however many you decide to give students). Additionally, if you have them, make brochures and magazines available for those who finish reading early. Make sure the students understand the purpose of their in-depth research.

■ **Tell students** that in a few days, you will convene a Salmon Summit in your classroom. The purpose of the Summit is to hear the many points of view regarding salmon run recovery and enhancement. Not only do you expect to hear what different people think, but you also expect each speaker to come with a plan of action to ensure the "return of the salmon chief." These plans should be well thought out and should clearly demonstrate costs and benefits. The goal of each group is to convince the others at the Summit to adopt their specific plan.

Students will be expected to read and decide which roles they would be interested in pursuing.

■ **Provide ample time** for reading (depending on how many articles you decide to give students). Remind students to highlight important information.

■ **Ask students** to indicate the roles they are interested in—preferably a list of three, prioritized.

Extension

Encourage students to construct charts and graphs to illustrate their points or confirm their statistics.

List of Roles

Groups with a vested interest in salmon recovery and enhancement (30 roles):

Commercial Fishers*

Recreational Fishers*

Indian Fishers*

Environmentalist

Fish Advocate/Biologist

Bonneville Power Authority, Fish and Wildlife Director

Bonneville Power Authority, Public Relations

Farmer from Eastern Washington

Barge Owner on the Columbia River

Aluminum Factory Owner

Logger

Miner

Hatchery Owner*

Commercial Fish Farmer

State Fisheries Department*

State Department of Wildlife*

Power Customer (a taxpayer or could be an out-of-state consumer)

Taxpayer (citizen)*

Army Corps of Engineers*

Governors of the States of Washington, Oregon, and Idaho

Salmon Lose When Facing Dams and Cheap Electricity — Fish Against The Current

By Maria Williams
The Seattle Times
April 2, 1991

The day will come when electricity will be for everyone as the waters of the rivers and the winds of heaven. It should not merely be supplied, but lavished, so that men may use it as the air they breathe. —French writer Emile Zola, 1885

For half a century, the Northwest has lavished electricity on the West. At the same time, the region squandered the waters of its rivers, wasting another of its precious resources: salmon.

"We were dazzled by the lights; all we thought of was power," says Ed Chaney, a prominent Idaho water consultant. "We purloined water from the Columbia and the Snake rivers, we held it behind reservoirs and funneled it through turbines to generate power and then more power.

"We left nothing for the fish."

Half the runs of wild salmon—roughly 100 subspecies—are thought to be extinct on the Columbia and its main tributary, the Snake. Other runs are declining at an alarming rate. Although numerous causes can be cited, ever-increasing demand for inexpensive electricity is primarily to blame.

"Decades ago, the decision was made to give up some salmon for power," says Sen. Mark Hatfield of Oregon. "Back then, it seemed a fair trade. But our values have changed, and continued salmon losses will cost us far more than anticipated. We must change the equation."

Some conservationists say that means shutting down several of the Northwest's hydroelectric dams—the source of the region's abundant supply of cheap power -for weeks at a time during spring and fall salmon migration.

But here, as elsewhere, the equation will not work if expressed in such black and white terms.

Cheap hydroelectric power generated by the New Deal projects begun under President Franklin D. Roosevelt illuminated a future for the Northwest. It drew farmers, builders, bankers, entrepreneurs and industrialists to the region.

The dams also proved vital to America's success. During World War II, power generated by Columbia River dams ran the plutonium factory at Hanford and provided the electricity Boeing needed to build the nation's air force, including the plane that dropped the bomb on Nagasaki.

Today, 70 percent of the Northwest's electricity is generated by dams on the Columbia and its main tributaries. Much of the region's industrial development—including the power-guzzling aluminum smelters which annually produce 43 percent of the nation's aluminum and $1.9 billion in revenues—is fueled with low-cost hydroelectricity.

And because the Northwest's power is supplied by the river, the region's average electric bill is 40 percent less than the national average—and there is no surcharge in the form of air pollution or radioactivity.

Given the region's dependence on hydroelectricity, interrupting or even altering the system will no doubt prove to be both complicated and costly. Nevertheless, change is unavoidable.

The Columbia River and its tributaries are the most heavily developed hydroelectric system in the world, boasting 136 dams.

Salmon runs of historic size were destroyed when the first of those powerhouses, massive structures 20 to 50 stories high and up to a mile wide, were built.

Thousands of miles of spawning grounds were bulldozed or flooded; 1,500 miles of the nation's richest spawning grounds were destroyed during construction of Grand Coulee, completed in 1941.

Even where spawning grounds remained intact, runs were wiped out because the fish could not reach their natal streams to spawn. Not even the stalwart salmon can leap walls rising as high as the original Seafirst Bank tower. Some dams were equipped with fish ladders; others rose so high the ladders proved to be of no use.

Driven by instinct, the remaining wild salmon continue to challenge the dams. But with little success. Despite some changes in design and operation, the dams still present too many obstacles—up to 97 percent of the juvenile fish and 50 percent of the adults are killed trying to get by them.

Young fish, headed downstream to the Pacific to mature, must survive a trip past huge electricity-generating turbines. At the John Day Dam, the newest on the Columbia, federal fish and wildlife workers call the turbines "grinders" because the revolving metal engines mutilate the salmon.

An estimated 15 to 20 percent of

all salmon smolts are killed by turbines. An equal percentage dies shortly afterward; disoriented, they are particularly vulnerable to predators.

Stapled with dams, the river is often slack and warm. In some cases the current is so slow the smolts die because they can't make it to the sea before they change from freshwater to saltwater fish. Other times, the salmon, which prefer chilly water—50 to 55 degrees—literally poach in reservoirs where temperatures can exceed 70 degrees.

At the behest of Congress, the Bonneville Power Administration—by far the largest power provider in the Northwest—now spends in excess of $130 million a year on salmon-saving devices. Other public and private electricity-generating utility companies are also required to help finance efforts to restore salmon populations. In all, more than $1 billion a year is spent to protect and improve the runs.

Most of the money is used to rear salmon in hatcheries. Touted as the ultimate solution 50 years ago, hatchery programs are today criticized as part of the problem. Although there is disagreement within the scientific community, many biologists argue that modern, mass-produced salmon do not have the genetic diversity and strength to survive in the unpredictable conditions of the wild. Those biologists say hatchery fish are slow and stupid and prone to disease.

Hundreds of thousands of dollars are also being spent transporting fish. The U.S. Army Corps of Engineers hauls more than 20 million juvenile fish around the dams each year. Some salmon travel in huge trucks resembling street sweepers; more are corralled into large wire pens and towed down the river. Collection facilities cost upward of $5 million each to build and thousands of dollars a year to run.

Not surprisingly, biologists find problems with all of this.

"Transportation doesn't work," says Don Swartz, a biologist with the Oregon Department of Fish and Wildlife. "When the fish return to the foot of Bonneville they poke their heads out of the water and look for the boat."

Swartz is joking about the fish, but he's serious about the failure of transportation.

"We should be spending our money on something that works. Transportation doesn't and never will because it ignores biology," he says.

By way of a barely understood process, juvenile salmon swimming downstream are imprinted with cues that later serve as guideposts on the journey home.

"When salmon return upriver to spawn, they look for those markers," Swartz says. "When they are trucked or barged they have no road signs, no way to read the river. They get lost." In another expensive effort to save salmon, screens are being placed in front of the turbines. But again, success is limited.

Because each dam is different, each screen must be specifically designed and fitted. Done correctly, the cost can run into the millions.

Reluctantly, most river users agree the only way to reverse the fateful decline of the salmon will be to change the way the dams operate, to allow the Columbia to flow more often like the wild river it once was.

In the simplest of terms, there must be more water for the fish. The Columbia flows at a rate of 265,000 cubic feet per second—enough water to fill a glass for every drought-stricken Californian, but not enough to carry the salmon past the dams and satisfy ever-increasing demand for electricity.

Already billions of gallons of water are annually held for release when the fish are migrating, but biologists say much more water is needed to flush the young salmon out to sea.

Anticipating that Snake River sockeye would be recommended for protection under the Endangered Species Act, a proposal to spill more water over four Snake River dams this spring was crafted last month by the governors of Washington, Oregon, Idaho and Montana, the BPA, the Pacific Northwest Utilities Conference Committee, fishermen, Indian tribes and environmentalists.

Under the plan, the reservoirs behind Lower Granite, Little Goose, Lower Monumental and Ice Harbor dams would have been lowered, or "drawn down" 3 feet below minimum operating levels to create a current that would help speed smolts downstream.

Shipping would have been stalled on the Snake, and electricity-generating capacity would have been reduced by as much as 10 percent. A dramatic, if not desperate, experiment, it was considered the best course. It also was the first real agreement between regional policy-makers on a plan to save salmon.

The proposal has been rejected, however, by the Corps of Engineers—the agency responsible for day-to-day operation of federal dams. According to the Corps, there is no time to design a meaningful test. The experiment, to have taken place between March 26 and April 6, should be delayed until 1992, the Corps says.

The Corps' decision angers many, in particular Idaho Gov. Cecil Andrus, who originally proposed the draw-down plan. "It means the end of another generation of smolt," Andrus says, "which means we lost another year of salmon. We're one step closer to extinction."

John Velehradski, director of programs and project management for the Corps' North Pacific Division, based in Portland, Ore., says his agency was only trying to do the responsible thing.

"We're actively working with some 30 other agencies in an effort to help the salmon," he says. "We're not dragging our feet, we just want to make sure any new effort is worthwhile. The cost of some proposals is quite high."

The federal government has until 1992 to adopt a recovery plan for the wild Columbia and Snake River salmon; until then, exact costs are impossible to calculate.

But the BPA is projecting double-digit rate increases if the federal government decides water flows must be increased to help bolster the salmon's declining population.

Electricity price is a make-or-break factor for many Northwest industries. In the case of the aluminum industry, electricity amounts to roughly a third of its production costs. Higher rates could dull the industry's competitive edge, forcing some companies out of state or out of business.

But that is a worst-case scenario.

Rarely has enforcement of the Endangered Species Act caused serious economic hardship or threatened development. In 1978, when the U.S. Supreme Court ruled that construction of the Tellico Dam on the Tennessee River would jeopardize a tiny fish called the snail darter, the project was scrapped. And while many loggers here say listing the northern spotted owl is putting thousands out of work, a recovery plan has yet to be finalized and the full impact of the decision remains unknown.

What the act has done, clearly, is force the country to consider the costs of development. Costs that have been escalating for a very long time.

"Essentially, what we've been talking about is reversing the past five decades," says fisherman Mike Satterwhite of the conservationist sporting group Idaho Trout Unlimited. "And as we all know, you can never go back."

Factors in electric rates

Electricity rates vary by utility. One common factor is the cost of power provided by the Bonneville Power Administration, the federal agency responsible for the largest number of hydropower customers in the Northwest.

By federal law, BPA must base its rates on the cost of doing business: repaying a $15 billion federal construction loan; operating the dams; building and operating the transmission system; maintaining fish and wildlife programs and energy-conservation projects.

BPA rates are among the lowest in the nation.

To help even out the rates, the federal government in 1980 established the Residential Rate Exchange, which allows utilities that have higher expenses to enjoy the benefits of cheap federal power. The exchange has given more than $1 billion in rate relief.

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Hatchery Fish Found to Be Dumb, Wimpy

By Nicholas K. Geranios
The Seattle Times
April 5, 1992

ELLENSBURG — The patients of psychologist Terry DeVietti don't lie on couches. They swim naked in a tank of water. DeVietti is studying the behavior of fish to learn why wild and hatchery salmon have trouble living in the same stream. His findings could help prevent the extinction of wild salmon runs in the Northwest.

"We find a big difference in the behavior of hatchery fish and wild fish," the Central Washington University professor said. Hatchery fish are, well, dumber. Less stream-wise. They're also Darwinian wimps, with only a tiny fraction the survival rate of wild fish.

Perhaps as a result of these shortcomings, wild fish often will have nothing to do with the spawn of hatcheries. They often disappear when hatchery fish are added to a stream.

"We don't know exactly why, but we know it happens," DeVietti said. CWU scientists have erected an 8-foot-long aquarium in the Psychology Building, where they have simulated a natural stream. Into the water go wild and hatchery trout. The differences, captured on videotape, are obvious.

The wild trout spend most of their time under ledges or other cover. They retreat to the cover after they snatch food. They swim near the bottom of the tank and conserve energy by resting where the current is weakest. They travel alone.

The hatchery trout ignore cover. They swim near the surface, where they would be easy prey for birds. Sometimes they stick their fins out of the water, like wannabe sharks. They waste energy by fighting currents. They swim in packs.

"A fish that acts that way in the wild is going to be a dead fish," DeVietti said. Scientists hope to find ways to train hatchery fish to survive in the wild.

The CWU scientists also took part in a 1991 project by the state Department of Wildlife in which a video camera was placed underwater in a natural pool on the Teanaway River. The pool was about a mile above a release point where hatchery fish were planted in the river.

Before hatchery fish were released, the camera showed a healthy ecosystem with stress-free natural fish. "About a week after hatchery fish were released, all we could find in the pool were hatchery fish," DeVietti said. "The wild fish were gone. We don't know where they went, or why." There's little mystery about the whereabouts of most hatchery fish. They are dead.

Statistically, only 23 out of every 10,000 hatchery Chinook salmon planted, 0.23 percent, reach adulthood, DeVietti said. That compares with 3 to 6 percent of wild fish, he said.

But he does not blame the hatcheries. They do an excellent job of their mission, which is to produce baby fish, DeVietti said. The problem is those smolts are dumped into a wild environment and have little chance of surviving.

"You could hardly expect a lion or tiger raised in captivity to defend itself or to hunt for food if suddenly turned loose," DeVietti said. The answer may be to condition the hatchery fish to cope with the wild before they are released, he said.

While some scientists think genetics is the answer, DeVietti leans toward conditioning. His theory is that from their earliest development wild fish are taught to use cover. The wild fish are born in the gravel on a river bottom and remain there for weeks. Hatchery fish are born in concrete raceways with constant water flow and no cover.

Scientists need to learn what exactly influences fish behavior, and how to apply that knowledge to hatcheries, DeVietti said. "It may be something as simple as adding gravel or other kinds of cover to hatchery rearing tanks," he said. But the key is identifying the "critical period" for educating the young fish, he said.

The knowledge could save money as well as fish runs, he said. The low survival rate of hatchery salmon drives the cost of producing such fish up to $50 a pound, he said.

"There's not a lot of behavioral research done on fish," DeVietti said, because scientists did not see the need. He was also skeptical of the research, until fellow scientists taught a goldfish in two days to nudge a button to release food.

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Salmon-Policy Negotiators Face Upstream Struggle on Deadline

By Maria Williams
The Seattle Times
January 10, 1991

Like the wild fish they are trying to save, members of the Northwest "Salmon Summit" are struggling against a daunting stream of demands. These include:

- New protections for Columbia River salmon
- Increased hydroelectric power generation
- More water for irrigation and transportation.

And like the weary salmon, the 30 summit participants who met here this week are finding it difficult to advance in this swift current of change and competing interests.

The summit was convened by Oregon Sen. Mark Hatfield last October after conservationists petitioned the federal government to place five stocks of salmon on the endangered-species list.

The group's goal is to write a comprehensive plan for restoring fish lost to hydroelectric power and other industries.

They face a Feb. 1 deadline that most believe they cannot meet. But few are willing to extend it.

"It has taken us too long to do too little," said Thane Tienson, legal counsel to Salmon For All, a coalition of Washington and Oregon fishing interests. "The inevitable losses are such nobody wants to volunteer anything more."

Hatfield hoped the summit would allow the region to avoid the kind of political and economic battles that continue over the spotted owl.

He also hoped to give local people—rather than the federal government -control over any plan to protect the salmon.

The group's goal is not to avert an endangered -species listing—that federal process has a life of its own. Rather, each representative speaks for a special interest.

For nearly a century, those interests have competed for use of the Columbia River. For a time, the river's resources seemed limitless. But in the past decade, people have begun to realize there is a limit.

And like the spotted owl, the vanishing wild salmon is an indication we have reached that limit.

While hydroelectric dams are responsible for much of the salmon's destruction, experts say logging, farming and other commercial practices have destroyed critical spawning habitat.

Overfishing near the river's mouth has reduced the number of salmon returning to spawn.

"We need an integrated solution, a gravel-to-grave solution," said Jack Robertson of the Bonneville Power Administration. "We need to protect the fish. But we need every ounce of power we can generate—we saw that during the last big freeze."

Since 1980, the Northwest Power Planning Council has been working on a program to mitigate damage to fish runs. Conservationists, including those who petitioned to protect the salmon, say that effort has failed.

"We've gone through 10 years of negotiated management on the river, and it hasn't worked," said Bill Bakke, of Oregon Trout, a petitioner.

Summit participants at least agree that, unanswered by regional leaders, a decision by Washington, D.C., to list the salmon could have disastrous consequences for the Northwest.

In the worst case, they say, a listing could push up power prices, drain irrigation ditches, curtail commercial and sport fishing, force shippers into dry dock, further depress the timber industry and void Indian treaty rights.

But after four months of talk, their divisions remain as wide and deep as the Columbia River gorge.

Instead of an accord, the antagonists have produced three radically different proposals—all of them unacceptable to the whole group.

One plan, from the Bonneville Power Administration, favors utilities. But it also includes a 1.5 billion, 10-year program to stabilize, protect and enhance Columbia fish runs.

Critics say the BPA still would sacrifice too many fish to the turbines.

A second scheme, this one from Oregon Trout, calls for substantial cutbacks in power generation and fish harvest.

Critics say Oregon Trout would leave homeowners in the dark and fishermen on the shore.

The third proposal, a compromise of sorts, was presented Tuesday by the Mediation Institute, Seattle-based negotiation specialists with experience in natural-resource policy questions.

This latest offer calls for significant sacrifice from all involved: At certain times of the year, dam-reservoir levels would be lowered and some turbines shut down to improve the flow of water—and hence fish—through the Columbia and its tribu-

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taries.

At other times, fish would be barged to their destinations—something many fishermen oppose. New catch limits also would be set.

The first plan to draw upon the work of the summit, it pleased no one. However, it did prompt some of the most candid discussion at the conference table.

"This is no ground for compromise," said Al Wright, executive director of the Pacific Northwest Utilities Conference Committee. "It is the worst of everything."

Said Idaho sport-fishing spokesman Ed Chaney, "We cannot be persuaded this plan will work. We are opposed to just about everything we see here."

Such straight talk has been rare, in large part because many considered candor among competitors foolish. But recognizing that time has all but run out, Wright and Chaney, in plain language, said they would resolve their differences on a critical element of the plan:

Together, they would divide the waters—for generating power and for getting more fish down the river.

"We can't just walk away," Wright said. "We have these huge concrete monoliths sitting in the middle of the river and thousands of people dependent upon hydroelectric power generated by those dams."

If the fisheries are lost, Chaney said, "we'll see towns close up, lives wasted—to say nothing of the loss we'll feel if a fish that has survived 9 million years disappears from our Earth because we could not agree."

Whatever Chaney and Wright may settle on still must pass the tough scrutiny first of the summit group, then of the public. State and congressional approval will also be needed. It will be a long time before all the talk translates into more fish for the river.

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The Religion of the River — For Columbia Basin Tribes, Salmon Are More Than a Way of Life

By Jim Simon
The Seattle Times
April 4, 1991

CELILO VILLAGE, Ore. — Like most Native Americans living along the Columbia River Gorge, Warner Jim is a fisherman.

Each spring, with drumbeats echoing through a pine longhouse, Jim helps conduct a centuries-old feast of blessing marking the arrival of the first salmon.

From his village he can look across the flat, broad waters of the Columbia toward what was once the legendary Celilo Falls—fishing grounds so rich that a fellow Yakima Indian recalled thinking as a boy he could walk across the backs of salmon choking the river from bank to bank.

But for Jim, a burly member of the Pine Creek Band, being a "fisherman" these days is more a matter of birthright than a way to earn a living.

Despite more than $1 billion spent by dozens of agencies to restore salmon, there are no longer enough fish in the Columbia for the river people. Certainly not enough for the 500 or so Yakimas who still fish the salmon that once sustained their people economically and spiritually.

Runs of Chinook, the regal king salmon, were so poor this fall that Jim's family couldn't get a tribal permit to fish for a ceremonial dinner. Instead, officials gave him seven salmon from a nearby hatchery. And the worshipers settled for chicken and beef from Safeway.

"What looks like a miracle to whites was a disaster for many of us," says Jim, surveying in his mind the mighty dams that tamed the river. "It changed not just our way of living. It almost changed our whole way of thinking."

For the 8,000-member Yakima Nation and the smaller tribes along the river, the fate of the Columbia's resources is a question not just of fish but of sovereignty.

Many tribal leaders welcome as long overdue the proposal to list the wild salmon under the Endangered Species Act. At the same time, many worry the current fight to protect those wild salmon runs could victimize Native Americans again by further restricting their fishing rights.

Warner Jim can only shake his head at the thought of a river so out of harmony with itself. A river so troubled that the spiritual strength tribal members glean from the salmon's survival is now in conflict with their ability to catch those fish.

Columbia River Indians have battled on the river bank and in the courts to assert traditional fishing rights guaranteed in their 1850s treaties with the Washington Territorial Government.

Perhaps more importantly, observers say tribal-court victories have forced government agencies to pour money and effort into salmon recovery.

But if Columbia River salmon are protected as threatened or endangered, many worry that further reductions in harvest levels for commercial and tribal fishermen will follow. That might well prompt a major challenge of Indian fishing rights, pitting the Endangered Species Act against treaties that are the linchpin of tribal sovereignty.

Said Howard Arnett, an Oregon attorney who represents the tribes, "Our position is that the tribes should be the last affected, the last harmed."

While folk singer Woody Guthrie sang the glories of the Columbia dams, the Yakimas watched their ancient salmon culture drown before their eyes.

Less than 35 years ago, tribal members still caught tens of millions of pounds of salmon in the churning chutes of Celilo Falls. That vanished in 1957 when the U.S. Army Corps of Engineers flooded Celilo for the power-generating Dalles Dam.

Twenty years later, construction of the lower Snake River dams wiped out many of the remaining runs.

On the surface, the efforts at rebuilding a fishery appear successful.

Pacing on high plywood scaffolds, tribal fishermen still sweep long pole nets through the water in search of steelhead and salmon. Their gillnets—nowadays, efficient and sometimes expensive Japanese-made nets—are set every few hundred feet between McNary and Bonneville dams.

On the Yakima River that flows through the tribe's reservation, more than $52 million has been spent on fish ladders and screens. The tribes have fought in court to ensure farmers can no longer dry up the river. As a result, salmon runs once thought extinct have been reintroduced. The number of returning spring Chinook on the river has gone from 200 a year to as many as 10,000 in recent years, the tribal fisheries office reports.

But as the runs have grown, so too have the number of fishermen. Ten years ago, Yakimas set out 450 gillnets. Last fall, there were 1,100 nets, covering every site allocated to the tribe.

While some white fishermen still grumble that Native Americans have gotten rich at their expense, evidence suggests otherwise. The Yakimas haven't allowed commercial fishing for spring and summer Chinook in more than 15 years, or for sockeye the last three years. Even ceremonial and subsistence catches were sharply curtailed last year.

"There's a helluva lot of pressure out there," said Levi George, Yakima tribal chairman. "Everybody's welcome down at the river. It's a cultural thing. But a lot more people want to fish than we can accommodate."

On a warm November day, the Columbia Gorge is at its most striking. Dark basalt cliffs rise abruptly from the shore; willows line the bank in shocking orange and lemon fall colors.

Outside his house, Warner Jim gestures toward a jagged outcropping above the village. Its name, he says as he traces the shape with his finger, is Old Lady Passing a Fish Basket.

Up and down the Columbia, Jim, now in his 50s, knows the fanciful descriptions given each rock formation. They comprise an unwritten map of fishing spots. He offers his genealogy not so much in bloodlines as in geography: This uncle came from the rolling hills of the Palouse, that cousin from the steep canyon lands of the Snake.

His family would migrate down to Celilo for the early steelhead and Chinook. Tribes from all over the Northwest—Blackfeet from Montana, Shoshones from Idaho—would make the trek as well, turning the fishing camps into trading posts.

Some years, his family could easily catch hundreds of salmon—now a season's harvest—in a day. The fish would then be dried in smoke huts, made into jerky, canned or ground into powder.

If that way of life remains sacred, passed on in songs and ceremonies enjoying a resurgence, the present is more jarring.

After Celilo was silenced, tribal elders say the federal government declared the fishing villages along the Columbia "camps" rather than homes. Though details are lost in history, George says families got only $800 to $3,000 in compensation and relocation assistance.

Celilo Village is now a muddy strip of land wedged between the freeway and the river, where a dozen families live in battered prefab government housing or tiny, unstable trailers.

It's a long way from what Lewis and Clark first found when they stumbled upon the village. Fish were stacked by the ton in the thriving Native American trading market at Celilo.

"My grandfather used to tell us that the white man wanted all that water. In the spring, the river would look 10 miles wide and you'd think, 'How could the white man want all that?' " Levi George recalls.

"The way the creator made the water there was enough for the plants and the fish that were here. But that's a limited amount."

If the utilities, aluminum companies and farmers are only now confronting that fact, the Yakimas came to grips with it long ago.

Tribal officials admit there will never be a true commercial fishery in the mid-Columbia.

Their goal, according to fisheries director Lynn Hatcher, is to keep the river open for fishing year-round with enough salmon to sustain tribal members and to keep their traditions alive.

Even those more modest aims face tough odds.

Farm runoff dumps silt, pesticides and animal waste into the Yakima, dramatically raising the water temperature, and thousands of fish still die from losing their way into irrigation canals. In the spawning grounds of the Methow River, local groups want the state to make the public water supply a higher priority than keeping enough water for fish.

And some suspect their investment in rebuilding runs may primarily benefit ocean fishermen, particularly Asian companies using deadly drift nets miles long.

"We can't just look at our little stretch of the river," sighed Yakima Council member Elmer Schuster as he peered at a huge map of the Columbia Basin. "I think the health of the water everywhere is way, way down."

The centerpiece of the Yakima's recovery effort is an experimental $40 million hatchery to raise "wild" fish. The idea is to breed up to 10 million salmon in the hatchery, then plant them in the natural habitat of various streams and creeks. If all works out, those fish will return to spawn in wild stretches of the river rather than hatcheries.

Some conservation groups, though, are skeptical. Bill Bakke of Oregon Trout says the tribes, like commercial fishermen, have often pursued the same misguided "meat factory" emphasis on producing big numbers of hatchery fish rather than concentrating on protecting wild ones.

Tougher even than figuring out whether hatcheries work is the question of whether an endangered-species listing could require the tribes, despite treaty rights, to further reduce their harvest. Many lawyers predict the Endangered Species Act would take precedence, noting that court decisions have generally held that treaty fishing rights don't extend to catching the last fish. Dating from the rights secured by the 1974 decision of U.S. District Judge George Boldt, the tribes have become going concerns, says Michael Blumm, a Lewis and Clark Law School professor specializing in water issues. "Without the ability to exercise those rights, there's no question the tribes would be in big trouble."

By reputation, those living along the river are both the most ornery and most traditional of the Columbia River Indians. Many consider themselves members of independent bands, rather than Yakimas, and they resent the tribe's efforts to regulate their fishing as tantamount to requiring a permit to practice their religion.

It is the militance of the river people that has driven the Yakimas and other tribes to battle for whatever piece of the Columbia's bounty they now receive.

As far back as 1905, the Yakimas fought all the way to the Supreme Court to force white fishermen to remove their salmon traps from tribal fishing grounds. In the 1960s, defying regulations in Oregon and Washington, tribal members including Warner Jim were regularly arrested for fishing with gill-nets. Tribal officials say those cases went to court at least 60 times and the Indians never lost, firmly establishing their treaty rights.

In 1969, the federal government sued on behalf of four Columbia River tribes—the Yakimas, Warm Springs, Nez Perce and Umatillas—to ensure them a share of the harvest, prompting a court-supervised allocation plan that is renegotiated each year. With the Boldt decision, those treaty rights were interpreted to guarantee the tribes 50 percent of the harvest of fish spawned between McNary and Bonneville dams.

After more than a decade, tribes and local irrigators are still in court over water rights in the Yakima Valley.

One of those battlers is Chief Johny Jackson, who lives in a plywood shack just upstream from where the Big White Salmon River flows into the Columbia.

Like many of his fellow river people, Jackson clings to the past. In a big smokehouse attached to his house, he dries his catch in the traditional manner. He still sings the songs and practices the rituals celebrating the miracle of the salmon's annual return.

Years ago Jackson quit a good-paying job to return to where his ancestors are buried. He has resisted federal efforts to evict him from his riverside parcel.

"When the fish are here, we're to use them. That's our religion, that's our life," said Jackson. "You have to get up and make some noise. That's why we're still on the river."

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The Clock Is Running on Salmon Survival

By Brad Knickerbocker
The Christian Science Monitor
May 3, 1991

THE DALLES, Ore. — Indian tribes from around the Northwest gathered along the Columbia River recently for their annual "Salmon Feast and Pow-Wow." For thousands of years, their ancestors had fished Celilo Falls near here, and the air was heavy with tradition as well as the flavorful smoke of salmon cooked in great slabs over open fires.

But the atmosphere was bittersweet, for the custom of fishing was radically changed by the construction of The Dalles lock and dam that turned Celilo Falls into a reservoir 34 years ago. Now a series of 56 major dams throughout the 260,000-square-mile Columbia River watershed—plus other 20th-century agricultural, industrial, and transportation activities—threatens the very existence of Pacific Northwest salmon.

The Bonneville Power Administration—which markets Northwest hydropower—sums up the history of the problem this way:

"All along the river, reservoirs flooded miles of what had been salmon-spawning and rearing grounds for thousands of years. Agriculture also contributed to declining fish runs as farm animals grazed on streamside vegetation and irrigators impounded streams and returned the water laden with sediment, pesticides, and herbicides. Careless logging altered watershed runoff, removed shade trees, and scoured the gravel streambeds that salmon and steelhead need to spawn. Dredge-mining, industrial waste, and the toxic drainage from cities and roads polluted the river environment for fish." Then there are the eight or nine major hydroelectric dams the smolts—juvenile fish—face along the Snake and Columbia Rivers, each one of which reduces the downstream run by another 10 to 15 percent.

The result, says Ed Chaney, a fisheries consultant and salmon expert, is that "one of the most magnificent creatures on the face of the earth is about to become like the buffalo and the passenger pigeon." As head of the Northwest Resource Information Center in Eagle, Idaho, and one of the strongest advocates for salmon over the past 25 years, Mr. Chaney may be forgiven overstatement. But recent scientific evidence bears him out.

The American Fisheries Society (a scientific group founded in 1870) reported last month that 214 stocks of anadromous, or ocean-migrating, fish from Oregon, Washington, Idaho, and California are dangerously depleted. Of those, 159 are at high or moderate risk of extinction, and 19 may already be extinct.

A week earlier, the National Marine Fisheries Service proposed listing the Idaho sockeye salmon under the Endangered Species Act. Recent annual salmon counts indicate that the Idaho sockeye may already be a goner. In 1989, official fish counters spotted only two sockeye at the Lower Granite Dam, the last passable dam on the Snake River. Last year there was only one, and scientists aren't certain the fish made it all the way to its spawning ground. Four other salmon runs (spring, summer, and fall Chinook in the Snake and coho in the Columbia) are likely to be listed as threatened or endangered this summer.

One hundred years ago, salmon were abundant. Tribes were well-fed and able to trade from their excess catch. Then white settlers, using large machines like "fish wheels" and modern vacuum-canning facilities, stepped up the annual harvest. The Reclamation Act of 1902 began a process of flood control and irrigation that turned millions of acres of eastern and central Oregon and Washington into a cornucopia of grain and fruit. Locks and canals extended waterborne trade to and from the Pacific nearly 500 miles into Idaho.

But it was the hydroelectric dams, beginning with Bonneville in 1938, that accelerated the decline of the salmon and steelhead (a migrating species of trout). According to the Northwest Power Planning Council, 75 percent of the salmon loss has been due to the dams.

The fish are born hundreds of miles back up the Columbia/Snake watershed. As juveniles, they work their way out to the Pacific, then spend two or three years migrating up to Alaska and back before swimming upstream to their place of birth to spawn. Their biggest obstacles in both directions are the dams. The dam builders and operators have added fish ladders to help them upstream and devices to guide them downstream around the huge, churning turbines. But neither these nor fish barges, nor millions of dollars spent on fish hatcheries, nor increases in water flow at key times of year have proved satisfactory.

The smolts (whose "biological

clock" necessitates their getting to the ocean in about three weeks) are held up in reservoirs, which are too warm and expose them to predators and disease. Many are killed in the power generators. (Imagine swimming through a giant food-processor.) And there are serious questions about whether hatchery fish inherit the hardiness, migratory ability, and instinct to survive.

"About half the hatchery fish (as juveniles headed downstream) never make it to the first dam," says Pamela Barrow, director of environmental affairs for the Pacific Northwest Utilities Conference Committee. "That tells us we have a big problem with our hatchery fish. We're turning out very, very poor quality fish."

The annual run, estimated to be 10 to 16 million fish 50 years ago, has dropped 85 percent to about 2.5 million. And 90 percent of those are hatchery fish (called "swimming hot dogs" by critics) not from original wild stocks, of which only 3 percent are left.

"The real problem we're all guilty of is short-term vision," says Cecil Andrus, the governor of Idaho, who was secretary of the interior in the Carter administration. There is plenty of blame to go around, Governor Andrus said in a recent interview. But he says the chief culprits are the United States Army Corps of Engineers, the Bonneville Power Administration, and the White House Office of Management and Budget (OMB).

THE OMB is pushing Bonneville for more power revenues to pay off the debts from power-facility construction, especially the nuclear-power plants of the ill-fated Washington Public Power Supply System (dubbed WHOOPS). Of the five plants originally planned, two were abandoned before construction began, two were mothballed, and only one is operating. The result was a municipal bond default of $2.25 billion, the largest municipal bond default in US history.

The plight of the salmon is not a recent revelation. Warnings from biologists and fish agencies began decades ago. In 1980, Congress passed amendments to the Pacific Northwest Power Planning and Conservation Act designed to "protect, mitigate, and enhance" fish and wildlife on the Columbia and its tributaries. In essence, fish were to be on an equal footing with human activity in the watershed. A council appointed by the governors of Oregon, Washington, Idaho, and Montana was established to draft regional-power and fish-recovery plans.

Bonneville and other government agencies invested millions of dollars in habitat-improvement and hatchery programs, set up a "water budget" to increase flows when fish were migrating, and limited salmon harvest. But critics say the effort not only was not enough but was misdirected toward economic ends rather than preserving biological diversity.

"It wasn't an ecologically designed recovery program; it was simply designed to increase fish," says Bill Bakke, head of the Portland-based conservation group Oregon Trout. "We convinced ourselves that all we needed to do was build hatcheries and release fish for harvesters and everything would be OK."

Some runs showed improvement, but when the overall result proved unsatisfactory—especially for wild stocks—Indian tribes and environmental groups petitioned the federal government under the Endangered Species Act. Even if the government approves the listings, it will take at least another two years to have a recovery plan in place.

To find a quicker solution (and one that could be worked out within the region), US Sen. Mark O. Hatfield (R) of Oregon convened a "salmon summit" of all interested parties. The group recommended that the Army Corps of Engineers release more water to help the salmon travel downriver but failed to come up with a comprehensive salmon recovery plan.

"I had high hopes for the summit, but it became obvious that only some of the participants wanted to solve the problem," Andrus said. "The downriver power interests clearly have the notion that if they can stall for two or three years the problem will go away because the anadromous fish will become extinct. If I sound pessimistic and a little ticked off, you've got it right."

Steps necessary to save the threatened salmon stocks are no great mystery: more water downstream to help migration, more protective devices around dams, and stricter limits on commercial fish harvests. It sounds simple, but will be far from easy. More water for fish means less water for commercial activities. Especially hard hit could be farmers—who are likely to have less water for irrigation but will need to pay more to pump it as electricity rates go up. Comparisons have been made to another environmental-economic battle in the Northwest—protecting northern spotted owl habitat at a cost to the timber industry.

There is a similarity in that hatchery fish are unnatural in the same way that tree plantations following clear-cuts are not the same as old-growth forests.

But the salmon story is far more politically complicated, involving not only many major industries (for example, 40 percent of all US aluminum production and $5 billion in annual farm output) but also just about everyone who flips on a light switch here. Andrus says the cost must be shared by all involved in the region, special interests as well as electric-rate payers. To help ease the burden, he wants the White House to write off at least part of Bonneville Power's debt. "If we can forgive Egypt's debt of $8 billion and pay Tel Aviv $650 million for Scud missile damage, we can solve the fish problem," he says.

Under the Endangered Species Act, biological issues must be addressed independent of any economic impact. Environmentalists are preparing lawsuits to force federal agencies to do just that once the expected official listings occur. But they also stress that protecting species will inevitably be best for the economy as well, if government planners and water users will take the longer view.

"What we're ultimately doing is protecting a genetic base and all of its variability," says conservationist Bakke, whose happiest hours are spent in waders with a fly rod in his hand. "The economic benefits ultimately rest on that."

Like salmon migration from the watershed of the Columbia and Snake Rivers to the Pacific, timing may be the key to any recovery program. "It can be fixed, and I'm convinced that it can be cost-effective," salmon expert Chaney says. "The only question is, will the fish hold out?"

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Add Rivers to "Endangered" and "Threatened" Lists

By Brad Knickerbocker
The Christian Science Monitor
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"I AM haunted by waters," Norman Maclean wrote at the end of his beautiful, short autobiographical piece about fly-fishing and life just this side of frontier days in Montana. And so we all are when we see them in their essence: high mountain lakes, deep blue and bottomless; rhythmic ocean surf; flowing streams and rivers—especially rivers, metaphors for adventure and discovery, purity and progress.

For Maclean, the Blackfoot River, which flows out of Rogers Pass on the Continental Divide to where it joins the Clark Fork 132 miles later near Missoula, was "the big river." It was the one to fish in a family (headed by a Presbyterian minister) for whom "there was no clear distinction between religion and fly-fishing."

The Blackfoot today is a changed river. Toxic tailings and acid drainage from abandoned mines; oil and gas development at its headwaters; grazing and logging with consequent siltation; diversions for agriculture: All have had their impact since Meriwether Lewis passed through in 1806, and especially since the Maclean brothers and their father pulled in cutthroat, rainbow, and brookies there in the early part of the century. Some say the bull trout should now be listed under the Endangered Species Act.

The Blackfoot River itself recently made the unofficial list of 25 endangered and threatened North American rivers posted each year by the conservation group American Rivers. "Indeed, by last year," the group's report notes, "the Blackfoot River had become so degraded that the fishing scenes in the filming of 'A River Runs Through It' [a Robert Redford project] had to be shot on another river."

Too often we have treated rivers more like plumbing (or worse yet, toilets) instead of the ecological circulatory system they truly are. With little thought for the ultimate consequences, we flush our domestic and industrial wastes into them, or we rearrange their natural flow. Then when the tap water starts to stink or some critter checks out and environmentalists get all exercised, we wonder why. We seem to forget, as the saying goes, that "we all live downstream."

Downstream from the Blackfoot is the Columbia River, which together with its tributaries carries twice the flow of the Nile and 10 times as much as the Colorado. Seen along the Columbia River Gorge National Scenic Area, the river looks as powerful and fresh as ever. It carries huge cargo vessels up to Lewiston, Idaho, and back out to the Pacific. Its waters make the fields green and the orchards bloom this time of year. Windsurfers—Day-Glo water bugs—skitter across its surface at a terrific pace.

But the Columbia too is in big trouble, so much so that it's No. 1 on the American Rivers "endangered" list. Here, the problem is not only farming, logging, mining, development, and over-fishing, but also major dams throughout the Columbia/Snake River watershed designed to harness cheap power for the Northwest and California.

Last December, the federal government listed Snake River sockeye salmon as endangered, and two weeks ago the Chinook (the largest of the species, also called king salmon) was added to the "threatened" list. According to the American Fisheries Society (a scientific group), 214 stocks of ocean-migrating fish up and down the rivers emptying into the Pacific are dangerously depleted; 159 risk extinction, and 19 are most likely already goners.

Back when Norman Maclean was fishing the Blackfoot, as many as 16 million wild salmon muscled their way back up the Columbia Basin to spawn. Today there are fewer than 3 million, and most of those are hatchery fish, which have a hard time figuring out where they are or where to go. ("Swimming hot-dogs," critics call them.) The wild stocks are down to just 3 percent of their original population.

The point is not to idealize salmon, which to most of us still look their best just off the grill. But to realize that when they are gone, or when some other river-dweller is gone because we've so engineered or polluted its habitat that recovery is extremely costly if not impossible, then we've exceeded our authority as the dominant species. And then, like Maclean but for different reasons, we really will be "haunted by waters."

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Bracing for Worst in West Coast Salmon Country

By Timothy Egan
The New York Times
April 5, 1992

CHINOOK, Wash., April 2 — Faced for the first time with a possible shutdown of all salmon fishing off the West Coast, the coastal communities dependent on the seasonal returns of the legendary fish are bracing for a season of despair.

Anticipating the worst, owners are boarding up their fresh fish markets instead of preparing to open. Big trolling boats that rolled through a half-century of hook-and-line chases are for sale, and others are being auctioned to pay off bank loans.

And charter operators, who usually are already filling in their calendars with bookings for the peak summer months, are telling callers they cannot make a commitment now.

"Who would ever have thought we would be looking at a season with zero salmon?" asked Bob Eaton, executive director of Salmon For All, which represents commercial net fishermen and processors here at the mouth of the Columbia River. "I mean, this is the Pacific Northwest. We are supposed to have these pristine rivers—and look what's happened."

Formula for Disaster

What has happened is a combination of human degradation of the streams in which salmon spawn—from excessive logging to development—and a series of dry years.

On April 10, the Pacific Fishery Management Council, appointed by the Federal Government to control the take of West Coast salmon, will meet in to decide if this year's season will be drastically curtailed or eliminated. The three options range from a massive reduction in the salmon harvest to a coast-wide ban on all salmon fishing by commercial, recreational and American Indian fishermen.

The tribes, which have their own fishing rights based on century-old treaties upheld by the Supreme Court, are likely to see the amount of fish they can take and the length of their season reduced by the Federal council.

Alaska Not Affected

Though the council meets every year to set the limits on what has become an increasingly small catch, never before have such draconian measures been under serious consideration.

"Whether you are a charter boat operator, a restaurant owner or an ocean troller, this is going to hurt real bad," said Phil Anderson, chairman of the 13-member fishing council. "But the other side of this is, if we overfish this year, there may be nothing in coming years."

The economic cost of a coast-wide shutdown has been estimated be as high as $60 million. The market price of Chinook, or king salmon, and coho, or silver salmon, is not expected to be affected because fishing in Alaska, which provides most of the nation's Pacific salmon, would continue without restrictions.

But the fleet of fishing boats from Santa Barbara, Calif., to the Canadian border at the Strait of Juan de Fuca are important to the regional economy, and to the cultural and recreational life of the West Coast. Some of the fishermen are making plans to go after cod and rockfish, but that involves changing over their boats for a different type of fishing that pays less because the price of these fish is usually half that of salmon.

It was 200 years ago this spring that Capt. Robert Gray became the first white man to see the Columbia River, the biggest salmon stream in the American West. Captain Gray traded nails for salmon with the Indians who lived here.

More than 50 salmon canneries used to dot the Columbia River. They are all gone. Nearly 16 million salmon used to return to this river, but perhaps only a million will come back this year. Salmon typically spend a year in fresh water, near the spawning grounds where they were born, before going out to sea, traveling vast distances in the ocean, and then returning to the stream of their birth to spawn and die.

Salmon Need Clean Water

Biologists have said that what the fish population needs more than anything to remain stable is free-flowing, clean water.

"If you got salmon coming up your stream, you have clean water. It's that simple," said John Baker, who has been a commercial fisherman for the last 25 years.

The main causes for the decline of the salmon runs can be seen from the bow of Mr. Baker's 38-foot ocean troller, the "Murzy," which is anchored at this small port at the mouth of the Columbia. On both sides of the river, rising to the skyline, the hillsides show the scars from decades of clear-cut logging in which all the trees are taken. With no trees to hold the soil in place, the sediment clogs and suffocates the salmon spawning streams.

Another problem, salmon-eating sea lions, are within barking distance of his boat. The sea lions are protected by Federal law, but as their numbers have grown, they have become a target of fishermen. "If we had plenty of fish we wouldn't worry about sea lions," Mr. Baker said. "But when you have so few salmon, what the sea lions take makes a big difference."

A third problem, cited by Federal officials as the main killer of salmon, are the dozens of dams that block the downriver passage of young fish. By some estimates, more than 95 percent of all young salmon are killed in the dams' turbines, or in the sluggish water created by the dams, as the fish attempt to move out to sea.

This month, dam operators have been experimenting with a "drawdown," whereby much of the water backed up behind Columbia River dams is released to create a better current for the young fish. The measure is a response to a listing of Idaho sockeye salmon under the Endangered Species Act. Two other Columbia River salmon species are expected to be listed under the act this spring.

Effort to Save Jobs

Unlike the fight over the northern spotted owl, which has tied up logging on Federal land in the Northwest, the Federal effort to restore the salmon would, in the long run, save thousands of jobs. The owl is costing logging jobs because its nests mean that forests cannot be cut. In meetings this week in town halls along the coast, fishermen have blamed loggers for many of their problems.

The effort to restore fish runs on the Columbia is expected to cost more than $1 billion. But it will not bring back the fish in Northern California, where the Klamath River coho are at all-time low, or in Hood Canal, a natural arm of Puget Sound, where another coho run is nearing extinction. In the Puget Sound area, experts cite explosive population growth, and the paving of wetlands and the loss of clean water that comes with unrestricted development, for the decline of the fish.

"It's going to take a concerted effort to manage the land and water as well as the fish," said Larry Six, the executive director of the Federal fishery council.

The council, which will make its decision on West Coast restrictions at the end of a three-day meeting, regulates fishing in United States waters from 3 miles to 200 miles offshore. The states control the rivers and the ocean waters closer to the coasts, but usually follow the lead set by the Federal fishery council.

Mr. Six said he hoped the council would find a way to allow for a short fishing season to help those fishermen who are close to bankruptcy. But it may already be too late.

In the harbor at Astoria, on the Oregon side of the mouth of the Columbia, Chuck Thompson prepared a 48-foot troller, "The King," for auction. Mr. Thompson, a former fisherman who was hired to inspect the boat, said the vessel would have been worth $100,000 a year ago. But now, with prospects for the future fishing bleak, the boat's owner will be lucky to get $40,000 at an auction, he said.

"We've had freaks of nature in the past, and bad years that came with it, but what's going on now is no freak of nature—it's a tragedy," Mr. Thompson said.

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Who's to Blame for Salmon Shutdown? All of Us

Decision Friday Could End Season Before It Starts

By Ron Judd
The Seattle Times
April 5, 1992

The average Washingtonian doesn't troll for salmon. Wouldn't know a purse seiner from a kitchen strainer. Might even confuse mooching and jigging with be-bop and jazz.

But everyone has a part in a proposed salmon-fishing closure from Mexico to Canada this summer, fisheries officials say.

Because they helped cause it—just by living here.

That's the barbed message from commercial and recreational fishermen and the head of the Pacific Fishery Management Council, which will vote Friday on a plan to slam the door on the summer's coastal salmon fishing.

The proposed closure, aimed at protecting an alarmingly small number of wild coho returning to Hood Canal, would shut down tribal, commercial and recreational fishing off the entire West Coast, including Puget Sound.

It would be another blow to coastal communities, which 10 years ago hauled in roughly $20 million in salmon-related business but have seen that reduced sharply in recent years. It would strike at the heart of the state's cultural heritage. And it would leave three-quarters of a million licensed anglers looking for alternate summer fun. Angry fishermen are quick to list scapegoats: Flood. Drought. Canadians. Sea lions. El Nino.

All play a part. But in a larger sense, the wild coho is an indicator species for the traditional Northwest way of life.

"There's always somebody to point to," says Bill Wilkerson, former director of the state's fisheries and revenue departments. "But probably the biggest 'somebody' of all is us. We've made a lot of choices in society. The fish haven't fared too well in those choices."

Population growth and encroaching development have choked spawning grounds to the literal point of no return for the Pacific coho, some suggest. And despite heralded improvements in logging, many spawning grounds continue to be damaged by clear-cutting.

The growth boom alone can't shoulder the blame, Wilkerson says. But combine it with a one-two punch of flood and drought in 1989 and 1990, and "anyway you look at it, coho salmon are going to be in trouble," he said.

Heavy Catches Take Toll

And heavy catches over the years have taken their own toll. Westport charter operator Mark Cedergreen recalls one particularly hot fishing year in the 1970s when anglers caught their limit every day for weeks. When fishing finally slowed, one disgruntled customer asked, "Where have all the fish gone?"

"I think they all went up I-5 in plastic bags," Cedergreen responded.

To save what's left, the fishery council has drafted three alternative plans. One would allow a total catch of 160,000 coho; one calls for a catch of 100,000. The third would allow no fishing at all. The best-case scenario would be only half last year's harvest of 320,000, allowing a season of as little as three weeks at areas such as Westport.

Any of the three spells doom for Washington fishermen, who face the shortest fishing season on record. While the summer run of Chinook salmon looks relatively strong, fishing for all species—hatchery born or wild—must be curtailed to prevent wild coho catches.

It's a prospect Washington fishermen have faced before, says Phil Anderson, chairman of the 13-member PFMC and a Westport charter boat operator. Washington's coast was hit by severe salmon closures in 1988, 1984 and 1977.

Like this shortage, most of the previous problems were blamed on Mother Nature. The new worry is that salmon spawning grounds have been hit so hard by development that coho won't be able to bounce back from natural obstacles.

Development Versus Fish

Anderson says rapid development and coho can't survive compatibly in Kitsap County, where most Hood Canal salmon spawn.

"The public needs to make a decision when they go into an area like Kitsap County and promote rapid development," he said. "They need to make a decision about what kinds of trade-offs they're willing to accept in terms of impacts on our natural resources, like salmon."

State fisheries officials are conducting stream surveys around Hood Canal, with the aid of tribal fishery experts, says Gene DiDonato, the state's harvest management director.

But there is no umbrella agency to force maintenance of fish habitat the way the PFMC controls the fish harvest, Anderson says.

"We're going to promote long-term stability of the resource," he said. "But we will probably fail if we have to do it by ourselves."

The only hammer large enough to force blanket protections on spawning grounds is one no fisherman wants to see wielded. It's the federal Endangered Species Act, which already is forcing radical changes in management of sockeye and Chinook salmon returning to the Snake River via the Columbia.

Compared to those species, Washington's north coastal Chinook and coho runs are relatively well off, Anderson says. Fishermen know that, and haven't exactly taken the council's "zero-option" warning to heart, he says.

Recent gatherings of the PFMC's Washington caucus suggest Anderson is right. Despite persistent pleas to "share the pain" and treat salmon as a long-term resource rather than an annual crop, commercial fishermen, sports anglers and tribal members continued to clamor for their fair share at meetings this week in Renton.

They have good reasons.

"To us, quality of life begins with a job," Steve Arbaugh, president of the Puget Sound Gillnetters Association, told state officials. "You're talking about

Even if no salmon are harvested this year, only about 12,000 wild coho will return to Hood Canal in the fall. That compares with a goal of 19,100 established by an agreement between the state and tribal fish managers. The most-discussed option for this year—the 100,000 coho catch—allows only about 8,500 fish to escape.

The dilemma leaves anglers, trollers, netters and fisheries officials looking northward and licking their chops.

The U.S.-Canada salmon treaty, which allows British Columbia fishermen to harvest coho and Chinook bound for Washington, expires this year. The coho shortage is adding fuel to the notion that the U.S. gave up too many fish in the last negotiations.

"We've been totally frustrated at trying to get the Canadians to share in the conservation burden," Anderson said.

But few coho may survive to be divided between the two nations if current conditions persist.

"Look outside," he said. "It was 75 degrees this week. It's melting early. Three, four, five years from now are clearly going to be affected.

"We should be telling people, 'Look out for 1995.' Unfortunately, they don't do press releases four years in advance."

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Salmon Shortage Could Overshadow Spotted Owl

By Andrew Garber; *The Idaho Statesman*
Gannett News Service
October 13, 1992

STANLEY, Idaho — In a sterilized concrete tank at a state fishery near Redfish Lake, a lone pink sockeye salmon swims idly.

Scientists believe it to be Idaho's last wild sockeye—a warning that Idaho is on a collision course with the Endangered Species Act.

Saving the species could affect agriculture, mining, logging, grazing, fishing, boating and camping. The salmon's migration routes stretch through three states, and spawning grounds lie in seven Idaho national forests.

Outfitters are worried that protecting salmon runs could hurt business.

"We're fighting for our livelihoods," says Ron Gillett, the burly owner of Triangle C Ranch, a whitewater outfitting company in Stanley. Gillett fears the federal government could close his business if it decides rafting disturbs spawning fish on the Salmon River.

"There are going to be some real fights in the coming months," he predicts.

Cindy Chojnacky of the U.S. Forest Service predicted, "Salmon could make the spotted owl look like a canary." Efforts to save the endangered owl hurt Oregon's timber industry when several million acres of old-growth forest were set aside as owl habitat.

The lone salmon in the tank is merely a symbol of how depleted is the wild salmon run. Virtually all salmon in Idaho will have to be bred in hatcheries, and even they face an uncertain future.

Idaho's salmon runs have dwindled to the point that only a few spring Chinook salmon, raised in Idaho hatcheries, can be harvested intermittently. The returning sockeye are stashed in fish hatcheries. And all returning summer and fall Chinook are either put in hatcheries or left alone to breed naturally.

The biggest battle will be between Idaho and its downstream neighbors, Oregon and Washington.

Idaho Gov. Cecil Andrus, the state Fish and Game Department, and local environmental groups want four dams on the lower Snake River altered to allow easier migration. Most experts say dams on the Columbia and Snake rivers kill more than 90 percent of the salmon.

Downstream groups including power utilities, aluminum manufacturers and barge operators fear that hydroelectric power rates may increase if dam operations are modified.

They want efforts focused elsewhere, such as improving salmon habitat in the lakes, rivers and streams where salmon lay their eggs in Idaho by controlling grazing, mining and other activities.

Both Idaho and downstream interests have filed suits in federal court and are heavily lobbying the National Marine Fisheries Service, which is charged with saving the species.

Idaho could benefit from a restored multimillion-dollar salmon industry.

Saving the fish will be "an economic development act," Boise salmon advocate Ed Chaney says. "It will restore a very valuable asset."

Federal officials say it is too early to determine what Idaho will need to do to help save the fish. But things will change, they say.

"Just like with the spotted owl, everyone will have to suck it up," says John Lloyd, a Forest Service fisheries biologist for the Sawtooth National Recreation Area.

It's clear some already are. Bob Piva's voice shakes with anger when he talks about the Forest Service displacing 400 cattle owned by several ranchers from pasture land by the Salmon River in August.

"In the whole time we've been in this valley, we've never gotten a trespass notice," he says.

"They gave us 48 hours' notice like it was a crisis, and it wasn't," said Piva, whose great-grandfather was the first rancher in the Stanley Basin.

The Forest Service ordered the ranchers to remove the cattle because some cattle had broken through a fence and waded into the Salmon River, a possible threat to salmon spawning habitat.

The Forest Service is considering making about 60 percent of the public grazing lands now used by ranchers in the Stanley Basin off-limits to cattle to protect salmon runs.

"It's caused me a lot of sleepless nights," rancher Ron Wilson says. "I had to tell my son, 'You might not have a job here.'"

Wilson's father started grazing cattle in the shadow of the craggy Sawtooth Mountains in the 1930s.

If the Forest Service cuts his grazing allotment, Wilson says he would need to reduce his herd from 290 head of cattle to 100. The smaller herd would provide enough money for him to live on. But Wilson says his son could not afford to buy the ranch, allow him to retire, and make enough money to pay off the loan.

Ranchers say the problem is not lack of habitat but a lack of fish. Wilson and others, including Andrus, say downstream groups in Oregon and Washington want to divert attention from fixing the Columbia and Snake river dams by focusing efforts on salmon habitat in Idaho.

Dave Harper, a spokesman for downstream utilities, says the companies and other interests have helped increase attention on issues such as habitat in Idaho.

"Everybody knows dams are part of the problem, but if you don't do something about habitat, there's no way to return the fish," he says.

Jack Bills, supervisor of the Sawtooth National Forest, said the Forest Service cannot risk harming any returning salmon. "We have to take a look at every use taking place," he said.

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ESA; Economics to Be Prevailing Factor in the Reauthorization of Act, Sen. Hatfield Says

BNA *Washington Insider*
December 3, 1992

PORTLAND, OR (BNA) — Economics will be a prevailing factor in the pending reauthorization battle over the Endangered Species Act, Sen. Mark Hatfield (R-Ore.) said Dec. 2 at a congressional field hearing on Columbia River salmon Some species of the salmon are listed under the ESA.

Along with Hatfield, Northwest governors testified on the need for regional cooperation to reverse the declining salmon runs. Hatfield and the governors discussed a regional solution as a way of avoiding the costly litigation that has damaged the region's timber economy due to the listing of the northern spotted owl under the act.

The hearing was held by the Senate Subcommittee on Energy and Water Development of the Senate Committee on Appropriations, of which Hatfield is the ranking Republican member.

Recovery of the threatened Columbia River salmon will have a significant effect on the new Congress's reauthorization of the ESA, Hatfield said. While the ESA's economic effects have in the past been considered confined to the Northwest, now more listings nationally may prompt major changes in the act, he said.

The act now lists more than 1,200 species across all 50 states, he said. Lawmakers outside the Northwest are paying more attention, such as in Alabama where concerns over a species of sturgeon threaten 20,000 jobs, he said.

Hatfield said that he had heard from some senators that "we should really amend the guts out of the Endangered Species Act." While Hatfield said he supports reauthorization of the ESA, he added that "you can't expect" economics will not be a prevailing factor.

Hydroelectric Project

At the hearing key federal officials in charge of the Columbia River hydroelectric complex estimated it would cost from $1 billion to $5 billion over the next several decades to modify the dams to allow for annual "drawdowns" of the river. Drawdowns are one solution being tested to sharply lower reservoir levels in the spring to help speed migrating juvenile salmon to the ocean.

Already, fish protection measures costs the Bonneville Power Administration $300 million annually, said Randy Hardy, the administrator for the federal power marketing agency. About $100 million of the cost is for a variety of fish protection programs and the remainder is for lost power production and the cost of purchasing additional power due to fish constraints, he said. Bonneville has spent more than $1 billion in the last decade on fish protection, he said.

As the price tag for saving the Northwest salmon runs increases, it will take broad-based national support to free up federal money for such fish protection projects, Hatfield said.

Idaho Governor

Idaho Gov. Cecil Andrus (D) said that the ESA says "we won't permit a species to be extinct; it says nothing about costs." This past year only one Snake River sockeye salmon returned to its natal waters, he said. The year before, four sockeye returned through the Columbia River system to their spawning grounds in Redfish lake. The Snake River sockeye salmon is listed as an endangered species under the ESA and the Snake River Chinook is listed as threatened.

"I will see that the Endangered Species Act is enforced," Andrus said.

Despite the fish protection measures taken to date, there is a shortage of water in the Columbia River system to support salmon recovery, Andrus said. Water in the system is used for hydroelectric power generation, flood control, navigation, irrigation, industry, municipalities, and other uses as well as for fish.

Drawing down the reservoirs in the spring can help the salmon, but so far most of the federal agencies have not been supportive enough of such strategies, Andrus said. In particular, Andrus said the U.S. Army Corps of Engineers has a built-in bias against drawing down reservoirs. He said the Corps will be "gold-plating" its list of dam modifications to accommodate drawdowns in the years ahead.

Andrus said he does not want to see the Snake River Chinook runs go the way of the sockeye runs, but that the "biological clock for the fish is ticking faster than the federal agencies' clock," he said.

Regional Plan Better Than Litigation

While Andrus said he was supportive of Hatfield's call to achieve a regional solution on the salmon problem outside the courts, he nonetheless would go to court if necessary.

Hatfield lamented that already there are a half-dozen lawsuits in Northwest federal courts on the salmon (154 DEN A-1, 8/10/92). A leader in trying to craft a regional solution, Hatfield said such lawsuits could result in the management of the Northwest rivers by judicial decree — "the single most disastrous outcome that could possibly result from our hard work and tireless efforts."

"I remain a firm believer in the regional approach to salmon recovery," Hatfield said. "Our efforts in this regard will go far in showing whether the Endangered Species Act as currently drafted and interpreted can work. We are setting new precedent with each step we take, and it is important that this precedent work....Those who differ with the viewpoint and believe that the federal courts will preserve our regional heritage are making a gamble of monstrous proportions," he said.

Hatfield said the salmon recovery plan being developed by the Northwest Power Council will have a lasting impact on the federal government's efforts to save those salmon species now listed under the ESA. The four-state power council is charged by Congress to develop programs to mitigate fish damage caused by the federal dams on the Columbia system and has been asked by the states and Congress to develop a regional response to the listing of the Snake River salmon.

The National Marine Fisheries Services is currently developing a recovery plan for the Snake River fish and the council's plan may serve as a foundation for this effort. The NMFS plan is due out in March 1993.

Both the council's plan, and that being developed by NMFS, focus on the four "H's": hydropower, habitat, harvest, and hatcheries. Measures in the council's plan include increased flows in the Columbia and its largest tributary, the Snake River; installation of more screens at the dams to divert fish away from turbines; reductions in the harvest of adult fish both in the river and in the ocean; improved habitat protection in the basin for naturally spawning fish; and a better coordinated hatchery management plan.

Actions must be taken now to implement the council's plan, said Washington Gov. Booth Gardner (D) in a statement presented at the hearing. The plan without action will not save the salmon, he said.

For example, in California a 10-point plan was developed to save the winter Chinook run in the Sacramento River, listed as endangered under the ESA. The plan was not implemented and now desperate measures may have to be taken, Gardner said.

Like Hatfield, Gardner urged a regional solution outside the courts. So far the region has not lost control to the federal courts, he said. And so far, federal judges are not the ones deciding how much water to release from each of the dams in the region, he said.

While modifying the dams to better protect salmon is critical to the salmon's recovery, it is not the only answer, Hardy said.

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Energy Watchword for the Northwest: Conserve

By Brad Knickerbocker
The Christian Science Monitor
May 3, 1991

BOISE, Idaho — With twice the water of the Nile and 10 times the flow of the Colorado, the mighty Columbia River and its tributaries represent nature at its most powerful.

Churning through 30 federal hydroelectric dams, the Columbia system holds 40 percent of all United States hydropower potential and supplies 62 percent of the Pacific Northwest's electricity.

For years, this has kept utility bills here the lowest in the nation and still meant power to spare for air-conditioners 900 miles to the south in Los Angeles.

But with economic and population growth—the equivalent of adding another Portland, Ore., every year during the 1980s—and increased environmental awareness as well, times are changing.

"The surplus is gone," says Jim Goller of Idaho, chairman of the four-state Northwest Power Planning Council, which was established in 1980 by Congress to oversee regional power and the two principal federal agencies, the US Army Corps of Engineers and the Bonneville Power Administration.

The council's new energy plan emphasizes conservation—1,500 megawatts during the next decade, with a total available savings of 4,600 megawatts over a period of 20 years. (It takes about 1,000 megawatts to power Seattle for a year.) This amounts to the largest coordinated US conservation effort ever.

It won't be cheap, says Mr. Goller. Conserving that much energy will cost 2½ cents per kilowatt-hour in changes to commercial and residential structures, adjustments in industrial and agricultural practices, and new efficiencies in power generation and transmission. That could total $7 billion but is still only about half what new thermal power-generating capacity would cost.

Bonneville Power gets the rest of its generating capacity from coal-fired and nuclear plants. Power Council plans include streamlining the process for new plant design and approval, and "pinning down the cost and availability" of such "promising" energy sources as wind, solar, geothermal, and biomass. Lurking in the background are the two partly completed nuclear facilities that were mothballed when the Washington Public Power Supply System defaulted on its bonds.

BUT the emphasis over the near term is clearly on saving rather than generating, and the key to making it work will be convincing the 170 electric utilities in Oregon, Washington, Idaho, and Montana that conservation pays.

The Power Planning Council—which makes recommendations but can't order anybody to do anything—is urging changes to state regulations so that utility profits would be linked to how much energy is saved as well as how much power is sold.

"It's been a selling job showing utilities they can treat conservation as a resource just as they can new generating capability," Goller says.

Long before President Franklin D. Roosevelt dedicated the first hydropower dam in the Northwest, the mighty Columbia was home to hundreds of stocks of wild salmon. If several salmon stocks are listed under the Endangered Species Act, as is expected, then the Bonneville Power Administration, the US Army Corps of Engineers, utilities throughout the region—and ultimately everyone who lives here—may have no choice but to conserve.

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Utilities, Smelters Plan to Sue Agencies for Violations of Endangered Species Act

Utility Environment
May 29, 1992

A diverse group of Pacific Northwest utilities and aluminum smelters have issued a notice of an intent to sue numerous federal agencies for alleged violations of the Endangered Species Act (ESA) and inadequate protection of salmon.

The group is concerned that power interests have been forced to make major concessions for fish that will result in the loss of 400 MW and millions of dollars. Yet they say federal agencies have taken "inadequate steps" to insure that sport and commercial fishermen, hatchery operations and poor habitat management do not deplete salmon runs.

The notice indicates the parties will press a lawsuit if corrective actions are not taken within 60 days, although the goal is to avoid costly litigation. It was served upon the National Marine Fisheries Service (NMFS), which has ruled that various salmon species are endangered or threatened. The NMFS must approve regional salmon recovery efforts or come up with a plan of its own.

Other federal agencies served include the Secretaries of the U.S. Depts. of Commerce, Interior, Energy, Agriculture and of the Army; the Army Corps of Engineers; Pacific Fishery Management Council; Bureau of Land Management; Bureau of Reclamation; the Bonneville Power Administration; and others.

Entities serving the notice include the Public Utility Districts of Chelan and Grant Counties, Pacific Northwest Generating Cooperative, Lower Valley Power & Light, Direct Service Industries of BPA, including 10 aluminum smelters, and Puget Sound Power & Light.

The notice said that in order to fulfill statutory obligations to avoid jeopardy to the listed salmon species, NMFS must evaluate the salmon's entire life cycle as an integrated whole. Instead of this comprehensive approach, NMFS has "failed to adequately consider and address the combined effects of all federal, tribal, state and other actions proposed for 1992 that are likely to affect the listed species. In addition, NMFS failed to consider the combined effects of all causes of mortality throughout the salmon's life cycle."

BPA was named in the notice because, "We are concerned that consultations under the ESA may have forced BPA to take more actions than are warranted by he best scientific and commercial data available," said Bill Drummond, manager of the Public Power Council, which represents 114 consumer-owned electric utilities.

BPA this spring was required by federal agencies to store an additional 3,000 acre feet of water to be released later in the summer to aid migrating salmon. BPA has paid at least $40-million to buy replacement power for this lost hydroelectric generation.

The notice said the NMFS requirement for additional summer river flows "to the extent that they are not necessary or biologically sound, are in violation of the ESA."

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Save Our Salmon, Save Our Soul

Protection of Salmon and Hydroelectric Power Plants in the Pacific Northwest

By Clay Hathorn
The Nation
January 6, 1992

If the Pacific Northwest has any soul, it rests in a strong, tasty and bug-eyed fish, the salmon. As with many of the region's denizens, it's an adventuresome beast: It runs rivers, explores seas, climbs mountains but always returns home. As a fisherman's catch it is thrilling. "I have lived!" Rudyard Kipling wrote after fishing salmon in the Columbia River. "The American continent may now sink under the sea, for I have taken the best it yields." For Native Americans, salmon represents both food and religion.

But the Northwest has sold this soul for cheap power. The Columbia River system—the biggest salmon freeway in the Lower 48—is stitched with hydroelectric dams that produce the country's cheapest power, 40 percent cheaper than the national average. The dams not only fire industry, they supply water to make cropland out of rangeland, they channel rivers to ship freight, and they slaughter salmon by the millions. The number of wild salmon are 4 percent of what they were before the dams were built.

A debate is now raging over protecting the salmon. The federal government has listed one strain of the fish as protected under the Endangered Species Act and is considering listing three other strains. The topic is far-reaching. It strikes vital nerves—electric bills and fishing spots. In a year when the aforementioned act is up for Congressional reauthorization, it also promises to reveal whether the government, and specifically the Bush Administration, gives a flip about saving wildlife. As such, it stirs some blood, with Northwesterners making their excited claims: Fish or power. Power or fish.

Yet the issue isn't about fish or power; it's about fish and power. Even environmentalists like low electric bills. On a separate river, the Elwha in Washington's Olympic Peninsula, dam removal is a possibility for salmon restoration, but that's not the strategy for the Columbia. Conservationists, joined with sport fishing groups and native tribes, are looking for shifts in some standard procedures—for instance, reducing energy consumption so production can be slowed during salmon migration. Admittedly, some of these changes will alter economies, but they aren't nearly as rude as those imposed on the salmon. Fish and power. The salmon's allure and the attractiveness of hydropower—friendlier than most other energy forms—bring together forces that could forge a model

Clay Hathorn is a free-lance writer living in Seattle who writes frequently on fishery issues. of nature and civilization cohabiting. And, it's as close to a fair fight between nature and civilization as we're likely to see.

Tumbling from Canada south through Washington State until a wicked bend west along the Oregon border takes it to the Pacific Ocean, the Columbia is one mean river. It moves a quarter-million cubic feet of water per second to the ocean, enough for 30 million drought-dried Californians to drink a glass of water every second—or so calculates the Seattle Times, which also calls the Columbia "North America's biggest power plant." The river and its tributaries contain the world's largest hydroelectric system, with fifty-one dams. The major projects began in the New Deal days and have boosted manufacturing, agriculture and transportation.

Before the dams, a mere sixty years ago, this was wide-open country. Millions of salmon navigated the rivers, providing subsistence for native tribes, which celebrate the fish's anadromous qualities. Washington's Tulalips believe the first returning salmon of the season, called Big Chief King Salmon, is a scout sent from salmon at sea and that if they treat it well and return its remains to the water—after eating it—the fishing season will be good.

But the salmon populations are sinking like bones in the river. Before the dams, an estimated 10 million to 16 million wild salmon and steelhead returned to spawn in the waters where they were hatched. Now the runs are estimated at just 2.5 million fish, only one in four of which spawns naturally in streams and lakes; the others are raised in fish hatcheries. The Shoshone-Bannock tribes (descendants of Sacajawea, the Indian teenager who helped Lewis and Clark open the Northwest for white settlement) finally said Enough. The ShoBans filed a petition on April 2, 1990, seeking to list the Snake River sockeye, the strain that has declined most drastically, under the Endangered Species Act. (The Snake is the Columbia's biggest tributary.)

Salmon are born in rivers and lakes, migrate to the sea for one to six years and return to the place of their birth for spawning. These are strong fish—they swim upstream and up mountains—but they are not superfish. They cannot leap the 100-foot walls of Columbia's biggest dams, which wiped out about a third of the region's salmon spawning grounds. Because fish ladders, which the salmon hop up as if climbing stairs, were built at other, smaller dams in the Columbia system, salmon have continued to migrate.

The major losses come among juvenile salmon, called smolts, during their trip downstream. On an unimpeded river, smolts could flush through the Columbia in less than ten days. But the reservoir dams are often deep with slack water, leaving the smolts disoriented or open to predators. Others are chopped up in the turbines. Mortality rates are as high as 93 percent.

The Army Corps of Engineers, which runs some of the dams, takes 20 million juveniles around these obstacles each year in large trucks and barges. Not many fish come back. "I don't blame them," says Ed Chaney, director of the Northwest Resource Information Center in Eagle, Idaho, a private conservation policy group. Fish use the journey downstream to set guideposts for their return. Trucking throws them off.

"You might as well hit them over the head with a hammer," Chaney says. Although other factors—overfishing, irrigation, pesticide runoff, cattle grazing, clear-cuts—have hurt the salmon, the dams are the primary culprit. For example, some stocks off-limits to commercial fishers have not replenished themselves. "Once they stop fishing, you can't blame them," Chaney says. "Then you figure it has to be something else. It doesn't take a rocket scientist to figure out what that something else is."

The federal government has entered the fish-saving business, though its resolve is dubious. Responding to the ShoBan's petition, the Commerce Department's National Marine Fisheries Service (NMFS) has formally listed is endangered the Snake River sockeye, which travels almost 900 miles and climbs to a height of 6,500 feet to spawn. But the process took more than a year, involved no emergency measures and still hasn't produced a recovery plan, even though only four of the fish were seen in 1991. Industry-minded types mused what restoration's cost per fish would be, while pro-fish people like Andy Kerr wondered, "What the hell does it take to get action?" Kerr directs conservation efforts at the Oregon Natural Resources Council, a private group whose unofficial motto is "We sue a lot," a reference to lawsuits the council either filed or joined to protect other salmon strains.

The eventual proposal of NMFS enlarged the issue beyond a few sockeye. Three other salmon strains—one of them, the fall Chinook, with a whopping seventy-five members—were proposed for listing as "threatened," a less severe classification than "endangered." An American Fisheries Society report, however, says that at least fifty native salmon strains are at risk of extinction in the Columbia River basin. Now the salmon may have to wait a year for the Commerce Department to make a final ruling, and if the fish are listed under the Endangered Species Act, recovery plans will be adopted. Rolland Schmitten, NMFS regional director, who, with a boxer's deftness, sidestepped questions about why the toughest protections weren't sought, says the act is "very serious" and any listing "mandates certain action."

Unlike many Congressional edicts, the Endangered Species Act has the teeth of a barracuda, if interpreted strictly. Adopted in the wave of ecology legislation of the early 1970s, the act says economic considerations can't affect a final decision to list. Findings are also supposed to be based on science, not politics. But politics and business are all mixed up with wildlife, as the Northwest is learning in its struggle with logging prohibitions to save the spotted owl. Yet the testing of the act with the spotted owl is seen as a pop quiz when compared with the salmon question.

The Seattle Times reported sources from both sides saying they have told "high-level pressure" was put on the NMFS to rate the fish as "threatened" rather than "endangered." Schmitten denies this. Environmentalists doubt his sincerity. Moreover, they fear the salmon issue will be used to strip down the Endangered Species Act when it comes up for reauthorization. Already the act is being berated by some Northwest politicians. Conservationists hope to use the strength of the salmon issue to keep the act powerful. "The American people want to save salmon, " says Vic Sher, an attorney with the Sierra Club Legal Defense Fund in Seattle. "This is an illustration of how the act is intended to work and how it will work."

Economic considerations don't have to be incompatible with recovery plans, though, which is where the meat of this issue lies. Political, industrial and environmental interests met last year for a "salmon summit" to haggle out the parameters of recovery. Prospects for concessions are mixed. "I heard some talk; I heard some very serious talk from public utilities," Oregon Salmon Commission manager Tom Robinson says of the meeting. "I also heard a lot of backpedaling and excuses why they couldn't do anything."

The primary issue is river flows. Pro-fish forces want the water to move faster through dams so smolts can survive reservoirs and get over spillways; the Bonneville Power Administration, the federal agency that markets hydroelectric power in the Pacific Northwest, says it can't produce enough "firm" power on a variable river but may be willing to try some changes. The Corps of Engineers has been even more stubborn, refusing for the past ten years to participate in an experiment to flush more water through the Snake.

Fish and dams can exist together, conservationists say, with some rearranging of business. Start with the sale of energy. Publicly regulated utilities should be just that. If reducing energy needs saves salmon (by increasing flows), regulate Bonneville Power to make money from saving instead of selling energy. Consumers could be given loans to insulate homes to cut usage. Next, take the aluminum factories. Kerr, of the Oregon Natural Resources Council, says eleven aluminum plants on the river system provide one-fourth of 1 percent of the jobs in the Pacific Northwest but consume 20 percent of the power. Their energy use could be cut by forcing conservation measures in production or mandating recycling measures. Reducing barge traffic, at least during peak salmon runs, would also allow increased flows. Rail lines already built along the rivers could transport freight.

What about the loss of jobs? Much of the river industry receives government subsidies in the form of cheaper power, river access, dam use. Reallocate the subsidies to create other jobs, train workers or, for that matter, as Kerr puts it, "You could give them $50,000 a year to sit home." For example, closing or scaling back an aluminum plant would mean that less power is needed, saving fish. And, Kerr says, because aluminum plants pay a lower rate than other consumers, a portion of the electricity could be sold to raise money to help displaced workers.

The innovations could inspire similar action nationwide and provide a model for living with wildlife: efficiently run plants, energy-saving homes, salmon-filled rivers. But don't count on it. Although many of these changes make as much sense as personal hygiene, business will object. "This is the same mindset that said, degrees We'll go out of business with child labor laws and the eight-hour day,'" Kerr says. Chaney, sounding a bit battle-weary, adds, "The people who have their feet in the public trough are tough to dislodge. I would say the odds are not good we're going to save a lot of these fish." For what? Energy policies? How much longer must we kill—in rivers or in wars—for misguided energy use? The water should be allocated so every interest has a share—fish, dams, agriculture—dispersing the costs evenly. These are necessary costs to business, to life. A region's health should be defined at least partly by the health of its wildlife. In the Northwest, that could be salmon. It's a matter of saving souls.

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VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
MUSICAL
LOGICAL/MATHEMATICAL

Salmon Summit

Lesson 5

Objectives

- Students will analyze their roles using a role chart form.
- Student will cooperatively work with others to develop a plan of action.

Materials

Copies of handouts:

- Role Chart form
- Plan of Action

Time Required

3 to 5 class periods

Prior to Lesson

- Copy enough Role Chart forms so that every student has one.
- Determine who will be working in which groups. (Suggested groupings attached to Plan of Action)
- Copy Plan of Action.

Procedures

■ **Pass out Role Chart forms** and ask students to fill them in so they can meet with you about their roles in the next couple of days. This chart will help focus the students on the important ideas and concepts their role should address. It will also help you determine if the student is ready to attend the Salmon Summit as a fully informed participant.

■ **Announce Plan of Action** groups. Tell the groups that their task is to develop a complete Plan of Action to present at the Salmon Summit. They are expected to have the following ready for the Summit:

1. A one-page synopsis of their proposal.
2. A chart illustrating costs and benefits.

They need to be ready with a presentation of ten minutes or less and be ready to defend their proposal with facts and explanations.

■ **Set a deadline** for this activity. A minimum of three days is probably the least amount of time that should be given to ensure a quality job.

Extensions

- Write Poems for 2 Voices, using the different points of view. (Lesson plan follows.)
- Service learning idea: Teach younger students about the salmon issue by writing a play or performing some of your Poems for 2 Voices for a class of younger students.

Role Chart

Your name ______________________________

Your character's name ______________________________

Your character's occupation ______________________________

Write a description of a day in the life of your character on the back of this sheet. Give a picture of the routines your character follows. Share the interests of your character. Let us know about family, relationships, and dreams. Introduce us!

Using the value descriptors handout as an aid, what values does your character hold regarding the recovery and enhancement of salmon?

How would the extinction of salmon affect your character?

What is your character willing to do to ensure the return of the Salmon Chief?

Plan of Action

Statement of problem:

List of possible options (3 to 5):

Analysis of two most desirable options:

Costs	*Benefits*

Selection of preferred option:

Sequential list of steps (plan of action) to make preferred option a reality:

What is "right" about your solution?

How will your plan of action make things better?

Groups With a Vested Interest in Salmon Recovery and Enhancement

Suggested Groupings

Commercial Fishers
Recreational Fishers
Indian Fishers

Environmentalist
Fish Advocate/Biologist
Bonneville Power Authority, Fish and Wildlife Director
Bonneville Power Authority, Public Relations
Army Corps of Engineers

Farmer from Eastern Washington
Barge Owner on the Columbia River
Aluminum Factory Owner
Logger
Miner

Hatchery Owner
Commercial Fish Farmer
State Fisheries Department
State Department of Wildlife

Power Customer
Citizen/Taxpayer*
Governors of the States of Washington, Oregon, and Idaho

**Could have a citizen on every committee*

Extension: Poems for Two Voices

Materials
Poems for Two Voices by Paul Fleishman (optional); sample poem on next page

Procedures

- **Copy two or three poems** from Fleishman's book or the sample poem about the fifth amendment on the next page for each student or on overhead transparencies.

- **Have the students** read the poems aloud. Dividing the class in half works well.

- **Tell the students** that poems for two voices are a wonderful way to present two perspectives or opposing points of view. Students may choose to work individually or in pairs (usually pairs are preferred) to create a poem that is a dialog for two opposing points of view.

- **The structure** is quite simple. Each voice speaks individually and the two voices speak together, commenting on something about which they agree or agree to disagree. Tell the students to fold a piece of notebook in half lengthwise. One voice part stays on one side of the fold, the other voice stays on the opposite side. When they speak together, write the part in the middle of the paper.

For example:

Voice One

Voice Two

Things Agreed
Upon To Be
Read Jointly

Voice One

Voice Two

- *The actual length* is up to the authors, but there needs to be enough written so that the ideas are explored in depth. It is also important to remember that the two sides do not have to agree by the end of the poem. They may simply agree that they cannot agree on the issue. Try having the same pair of students write at least three poems together. The poems tend to get better, especially if you have the students share their first efforts with the whole class and then have them write at least two more.

- Plan a time to share the poems. After one reading in class, you'll find the students ready to share them with an audience, e.g., PTA, parents, or younger students.

- You may want the students to publish these. They generally turn out to be both very powerful and beautiful.

Poem for Two Voices on the Fifth Amendment

By Kara Hoffman

I am a loyal citizen of this country.

I am also a loyal citizen of this country.

I personally don't like the Fifth Amendment. I think
that it is unfair. I would like to see it abolished.

Abolished. Never. I think that the Fifth Amendment
does a lot for our country.

But it slows down our jury system.

I know it slows down our jury system but it is fair to
the criminals.

But if the criminals have already done the crime,
why waste time trying them?

Sometimes the people haven't committed the crime
and that's not fair to put them in jail.

But if they have, we waste a whole lot of time trying
them and then finding out that they are guilty.

But then at least we know that we are putting the
right man in jail.

I still don't agree with you.

Just think how you would feel if you were put in jail
for something you didn't do and you couldn't say
any thing about it. Wouldn't you be mad?

I would be mad.

So it does provide a safeguard.

You're right!

So, the Fifth Amendment may slow things
down, but it does keep things fair.

Kara Hoffman was a student in Rick Moulden's class at Chinook Middle School, Bellevue, Washington.

LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Salmon Summit

Lesson 6

Objectives

- Staying in character, student groups will present their Plan of Action to an adult.
- Facilitated by a person trained in mediation techniques, the students will analyze the Plans of Action, looking for areas of agreement and identifying areas of disagreement.
- Staying in character, students will try to compromise on areas of disagreement, coming to a Salmon Accord, or unified agreement on how to recover and enhance salmon runs in the Northwest.

Materials

- Copies of each group's synopsis for everyone

Outside Resource Person

- Trained mediator. (Call your local Dispute Resolution Center for help in finding someone. If you cannot find a mediator, invite an attorney, school administrator, or other adult.)

Time Required

1 to 2 class periods.

Prior to Lesson

- Secure a facilitator to mediate this session. It is important that the students experience how a trained mediator functions. If at all possible, this should be a period longer than 40 or 50 minutes, ideally 90 minutes. Prior to the mediation, briefly explain to your students what mediation is: Mediation is a process for resolving disputes that is an alternative to the court system. The mediator(s) (there may be more than one) acts as a neutral third party and assists people or groups to resolve a dispute by helping them to communicate better and come up with possible solutions that feel fair to everyone. The mediator does not make decisions and should always remain neutral. Usually, the mediator will allow each side to state their position, and then help the parties find common ground.
- You may also want to have someone play the role of a representative from the Northwest Power Planning Council . You could invite the principal, a parent, or school director. You could play this role or you could have the mediator act the part. The Council is the agency charged with coming up with a regional plan to both provide electricity to the Northwest and protect and enhance the Columbia River basin's fish and wildlife. (If you want the community to know about what you are doing, this is the time you might want to invite the press. You may want to encourage the students to "dress" for the Summit.)

- Set up the classroom in a "boardroom" style, rather than like a hearing. This is a collaborative activity (Some experts say the diamond-shape is most conducive for collaboration and consensus). We want people to cooperate and come to consensus. The Power Planning Council representative is looking for a workable plan. Have coalitions sit together. Identify the various coalitions by making signs, listing the group members names and interests, e.g., Bernie Whitebear, Indian Fishing.

Procedures

■ **Tell the students** that this is a formal meeting to determine the fate of salmon recovery and enhancement in the Northwest. Please address each other by formal names, e.g. Mr. Whitebear. Each group will be given ten minutes maximum to make its presentation. That time limit includes questions. If a group uses its full time on its presentation, then there will be no questions allowed at that time.

■ **Introduce the representative** of the Northwest Power Planning Council or other adult playing the role of mediator. Ask him/her to say a few words of welcome and to set the task.

■ **Assign a timekeeper**. Set up two minute, one minute and 30 second warnings. The mediator or person playing the role of the Planning Council representative should ask each coalition to introduce their group members and to begin their presentation with a statement of the problem as they see it. They should then state what their solution is, outlining costs and benefits. Finally, each coalition should specifically state each step in their Plan of Action and give reasons for each. Each group should pass out their written synopsis at the end of their presentation.

■ **If a mediator is present**, introduce the mediator at the conclusion of the presentations. Invite the mediator to briefly describe his/her background and how he/she came to be a mediator. Tell the students that the mediator is going to help them try to come up with an agreed upon Plan of Action to ensure salmon recovery and enhancement in the Northwest. This document will be known as The Salmon Accord. The mediator should point out common ground in the different groups' presentations and encourage a give-and-take discussion of possible compromises.

■ **When it is apparent** that the process is complete or that it is not going to progress, stop. Debrief the students about mediation as a strategy for problem-solving: What are the strengths, the weaknesses? When should mediation be used? How does mediation make you feel?

■ **Evaluate the groups' progress** toward reaching a Salmon Accord. If not complete, determine whether to continue another day or not. If complete, celebrate! Ask for volunteers to write up the Accord or write it up as group project in the next day or two.

Extension

Make a model of how a dam might be modified to permit a greater number of fish to migrate downstream. Create a model of how a region might look that put "fish first." Make a model of a salmon, the life cycle of a salmon, or the salmon food web to share with younger children.

Salmon Summit

Lesson 7

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Objectives

- Students will culminate the Salmon Summit by publishing a newspaper.
- Students will assess their own learning and contributions to the Salmon Summit.
- Students will identify public service projects that promote an environment which ensures the return of the salmon chief.

Materials

- Standard notebook paper cut in half lengthwise.
- Fine tip black felt pens.
- Optional book about using the newspaper in the classroom: *Extra, Extra, Read All about It* by Greta Barclay Lipson. Good Apple Book.

Time Required

2 class periods.

Prior to Lesson

Cut notebook paper in half.

Procedures

■ **Choose an editor** (someone who can spell, writes well, works well with others, is organized and responsible). Choose 2-4 others to serve on an Editorial Board. These people will help the editor.

■ **Name the paper** (The Salmon Net?). Brainstorm the sections of a newspaper, e.g., editorials, news articles, special features, regional news, religion, sports, horoscope, deaths, comics, classified advertising, cross-word and puzzles, business, Dear Abby, movies, political cartoons. (You might want to use a real newspaper to act as a prompt.)

■ **Tell the students** the paper needs to reflect three types of articles: what different groups *think* (they might interview each other in character), what people can *do* (tips about care of the environment or ways to get involved), and how they *feel* about the issue personally (cartoon, poetry, letters to the editor, special features, editorials, advice columns are a few ways to express feelings). Set a minimum number of contributions required from each student. Remind the students that the editors need to approve all story or article ideas prior to writing. Editors need to make sure all the different areas of newspapers are covered. One way to do this is for the editor to have an editorial board meeting to determine the number of editorials, feature articles, cartoons, etc. they will accept. The special feature article should be The Salmon Accord.

■ **Instruct students** to title, by-line and date-line the beginning of each article.

■ **Determine whether** to use manuscript or cursive for the whole paper. Write articles in pencil.

■ **Turn in to an editor** for proofing.

■ **After corrections**, go over the article in fine tip black felt pen.

■ **Using the reducing capacity** of a copy machine, reduce all articles to 74%. This reduction improves quality.

■ **Have editors** "paste up" (usually a little piece of transparent tape works fine) the reduced copies on the largest piece of paper your copy machine will accommodate. Keep columns separate by drawing black felt pen lines between each. Don't forget to leave room for a masthead. Fill in spaces with drawings of salmon and related pictures.

■ **Copy each page** and collate into a newspaper. Distribute to students, families, school administrators, and Board of Directors.

Extension

Close unit by doing fish printing either on fabric (T-shirts, sweats, dish towels, sheeting) or Japanese style on paper.

Gyotaku-Japanese Fish Printing

Source: Leaflet 2548, "Gyotaku-Japanese Fish Printing" from California Sea grant, free of charge from Christopher M. DeWees, Extension Marine Resources Specialist, University of California, Davis, California.

In Japan, fish printing is traditionally done with Sumi ink. It is available in most art stores and can be found in Seattle's International District stores, such as Uwajimaya's. You can also use thick water-base paints, such as tempera, or water-based linoleum block printing ink. If working on fabric, use the cloth paints sold for decorating sweatshirts and t-shirts. It's available at most art stores and fabric shops.

Rice paper works beautifully, comes in 60-foot rolls and is quite inexpensive. Newsprint, paper towels, and most any other flexible surface will work; experiment!

Study fish anatomy before doing this activity and you'll be more pleased with the results.

Materials

- Newspaper.
- Modeling clay.
- Pins.
- Water-base ink.
- Paint brush.
- Rice paper, paper towels, fabric, etc.

Procedures

■ **Clean and dry** the fish well. This means use soap and water to scrub the outside of the fish as well as the inside.

■ **Cover a table** with several layers of newspaper. Place fish on newspaper and spread fins out, using clay and straight pins to hold the extended fins.

■ **Brush on** a thin coating of ink, evenly over the whole fish. You may wish to leave the eye unpainted at this time.

■ **Place a piece** of newsprint, fabric, or other medium over the top of the fish.

■ **Use your fingers** to gently press the paper over the entire surface of the fish. Be careful, do not move the paper much or you'll get a "double exposure." Gently remove paper. Hang to dry.

- **Use a small brush** to make an eye, a drop of white works well. Let it dry and then add just a dab of black for the iris.

- **You can use** the same fish over and over. Don't change colors without washing it off and drying it well.

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Salmon Summit

Lesson 8

Objectives

- The students will culminate the Salmon Summit by comparing their Plans of Action with the Northwest Power Planning Council Salmon Strategy paper.
- The students will write a position paper regarding their Reflections on Salmon.
- Optional: The students will brainstorm and select a community service project they could do to either help with the recovery or enhancement of salmon. (See ideas in extension for Lesson 5.)

Materials

Copy of Northwest Power Planning Council *Salmon Strategy* (can be obtained from Council—address in bibliography).

Time Required

2 class periods.

Prior to Class

Make copies of the *Salmon Strategy* for all students.

Procedures

■ **Pass out** the *Salmon Strategy* paper. Read and discuss with the students. This will probably take more than one class period. Compare with the Salmon Accord the class agreed to, finding costs and benefits. If the class is motivated, write to the Northwest Power Planning Council, sharing your Accord and your collective feelings about their efforts.

■ **Give the students**, either as an in-class assignment or as a homework piece, the task of writing their reflections on the salmon issue. Structure length and format to fit their needs and style.

■ **If the class is moved** by this issue, brainstorm all the possible community service activities that members of the class could do to help either with recovery or enhancement of salmon. (For example, prepare a puppet show for younger students, write books for younger students, volunteer at the local aquarium, contact the local water district and find out about stream enhancement, raise salmon in the classroom, write letters to congressmen and women about the issue, set up informative booths in malls or school hallways. If there is a stream near your school that needs help, organize the school and local community to clean up the stream.) Choose a project and work on it to ensure the return of the Salmon Chief!

Car on Trial

Introduction

Description

This multidisciplinary unit is centered on giving students practice in using higher level thinking skills. Blending learning about the trial process with a current S-T-S (Science, Technology and Society) issue makes this unit unique. The Washington State Legislature has mandated environmental education and this unit can help meet that requirement. Unlike some mock trials, this unit is designed to involve the full participation of all students in a classroom all of the time. Cooperative learning is a core strategy used to achieve this goal.

Use of Outside Resource Persons

This unit is much enhanced by using outside resource people. A judge, lawyers and/or law students will be able to help the teacher with the legal concepts and procedures. Inviting in environmental experts will enrich the students' knowledge and appreciation for the complexity of the issue they are studying.

Time Required

12 to 15 class periods.

Overall Outcomes

Teachers will discover that they can readily use their reading, language arts and/or social studies and science periods to teach this unit, as the integration of skills used meet common student learning objectives in all four subject areas.

Social Studies and Science Outcomes

Students will:

- Demonstrate understanding of the complexity of how the automobile affects daily life, both positively and negatively.
- Identify the basic components of the Clear Air Act and its implications.
- Be able to discuss accurately the causes, effects, and solutions of smog.
- Create an historical timeline for the automobile industry.
- Be able to read and interpret several different kinds of tables, graphs, and charts.
- Become familiar with the various interest groups involved in the auto industry and the environment.
- Explain the purpose of trial procedures.
- Identify alternatives to the trial process.
- Conduct a mock trial, correctly following the sequence of steps in a trial and employing good technique for each role.
- Demonstrate knowledge of the rules of evidence and procedure.
- Demonstrate knowledge of the law applicable to the case.
- Become familiar with economic terms

and industrial processes as related to the automobile industry.

- Be able to identify four different kinds of pollution caused by the car and suggest realistic remedies for each problem.

Reading and Language Arts Outcomes

Students will:

- Identify issues and points of view.
- Analyze environmental cases in small, cooperative groups.
- Develop conceptual understanding of legal language, i.e., balancing the equities, the defense of laches.
- Read and analyze sworn statements.
- Demonstrate an understanding of the concept of "a preponderance of the evidence."
- Write a class "textbook" about the history and science of the car.
- Evaluate the "textbook" in terms of accuracy, presentation, and effectiveness.
- Identify role responsibilities for a trial after reading a handout.
- Differentiate between types of evidence.
- Read and discuss standard trial objections and evidence.
- Demonstrate skill in listening.
- Demonstrate skill in extemporaneous speech.
- Write material for the trial.
- Write a critique of the trial.

Higher Level Thinking Skills Outcomes

Students will:

- Practice independent and group decision-making.
- Define legal roles and practice the responsibilities attached to those roles.
- Solve problems related to environmental and legal concerns.
- Choose logical solutions from a series of options.
- Write a policy statement regarding cars for the Year 2010.
- Synthesize certain basic rights guaranteed by the U.S. Bill of Rights.
- Practice arguing sides of an issue.
- Identify facts that support or weaken arguments.
- Practice using the theory of a case to write arguments for or against.
- Differentiate between similar kinds of articles or instances.
- Demonstrate skill in rapid critical analysis.
- Apply knowledge of the law.
- Critique the trial as a means to achieve justice.

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Womack, James P., Daniel T. Jones & Daniel Roos. *The Machine That Changed the World*. New York: Rawson Associates. 1990. Based on the MIT study on the future of the automobile, this book outlines the auto manufacturing industry's challenge to compete in a changing market. Focuses on the competition with Japanese automakers.

Zuckerman, Wolfgang. *The End of the Road: The World Car Crisis and How We Can Solve It*. Post Mills, VT: Chelsea Green Publishing Co. 1991.

Articles, Other Resources

Institute for Transportation and the Environment, 85 E. Roanoke St., Seattle, WA 98102 (206) 322-5463. The Institute provides research and services to citizens concerned about the environmental and social consequences of the automobile-dominated transportation system. They publish "Transportopia" quarterly and the "Gridlock Gazette" four to six times annually.

Social Issues Resource Series, Inc. *Transportation*.

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 1

Objectives

Students will:

- Suggest technological systems and social systems affected by development of the technology of the car.
- List changes resulting from this particular technology.
- Use a graphic representation to show interconnections among the technology of the car, society, and social change.
- Recognize the value of understanding these connections in thinking about new technologies.
- Research and contribute to a Quick Book of Information About the Car, tracing the history and the science of the automobile.

Materials

Copies of handouts:

- Bibliography
- "Technology Tree"
- Newspaper article, "Amsterdam Plans Wide Limit on Cars"
- Overhead or copies of "Sample Technology Tree"
- Overhead or copies of possible investigation topics

Time Required

2 to 4 class periods.

Prior To Lesson

- Arrange for research enhancements, i.e. multi-media, access to city library, resource speakers, telephone interviews. Make copies and overheads.
- Read Mock Trial Administrative Checklist, Lesson 8. Investigate the possibility of taking your students on a field trip to a local court to observe a portion of a trial. Contact your local Bar Association or court clerk for more information about court tours.

Procedures

■ **Open the discussion** with the statements from Victor Ferkiss provided at the top of the Technology Tree handout. These may be read, written on the board or made into an overhead. Allow time for the students to absorb the statements, then begin to question them for understanding. Students should be able to illustrate their agreement or disagreement with any/all of the statements.

■ **Display** the Technology Tree. Explain that it provides a format for graphically representing the interconnections of a technology (the automobile), society, and social change. Build the technology tree for the car. (A completed sample is provided. This is only one way it might be filled in. There is no one right way.) You might want the students to work in groups first and then share their connections as you build a class tree based on their cooperative efforts.

■ **Debrief the activity** by asking the students if any of the categories or connections raise questions in their minds. List the questions on the board or overhead. Ask how this graphic format might help us understand new technologies. Discuss with the students whether they would classify the car as a new technology. Why or why not?

■ **Pass out** the newspaper article about Amsterdam. Read and identify arguments for and against the plan in the article. Ask the students if such a ban would be accepted in their community. After some discussion, tell the students that in the next couple of weeks they are going to put the car on trial for being a public nuisance. Explain that a public nuisance is an activity that injures, annoys, or endangers the safety, health, or comfort of a considerable number of people. One of the first activities is doing background research. What are some of the things they would want to know about the car, its history, and its influence on your community? (Refer to technology tree and questions that students raised. Take student questions. Suggest or add the topics from the Possible Topics overhead. Give each student a copy of the Bibliography.)

■ **Tell the students** they are going to create a Quick Information Book About the Car. Each student will select one topic to become knowledgeable about, writing no more than both sides of one piece of standard notebook paper. One possible format: State the topic in the form of a question. Draw a picture about the size of a postcard (4" x 6") relating to the question on a plain piece of paper. Glue it to the notebook paper. Write answer to the question. If using word processing, double space. Be sure ribbon is heavy. If handwriting, use fine tip black felt tip pen. Leave ample margin on left so book can be bound.

This Quick Information Book About the Car should only take two or three class periods to complete. Copy and create a classroom set of books to use for initial information for the trial, giving everyone in class access to the same information and equal responsibility to contribute to the knowledge of the whole group. At least one class period ought to be devoted to the reading and discussion of the information provided in this class-created book.

Extension

Using the Quick Information Book About the Car, make a time line of the history of the car, the current pollution problems related to the car, and suggested remedies (legislative and scientific). Create a vocabulary book or dictionary for the car.

Amsterdam Plans Wide Limit on Cars

By Marlise Simons
The New York Times
January 28, 1993

Even for a city that relishes the social experiment, this city's plan for a new urban life style may appear unusually radical. Amsterdam wants to be the first major European city that virtually banishes the car from its heart.

Wall-to-wall traffic, noise and fumes in the stovepipe streets and stiff gridlocks on the canal bridges have brought on the decision. The present image of the automobile here is approximately that of a leech on the body of the community.

"For years the city was forced to adapt to cars," said Rob Pistor, a city official and one of the plan's chief strategists. "Cars will now have to adapt to the city."

In the first stage, beginning this year, the plan aims to curtail traffic and to make life as unpleasant as possible for motorists who insist on nudging their way around the city's inner ring of canals. Cars will be squeezed off the streets by wider sidewalks and new bicycle lanes, and parking spaces will be cut back sharply. In the final stage, all non-vital traffic is to be banned.

Warnings From Businesses

While the plan has wide backing from frustrated residents, business groups are warning against the dangers: what may be a victory for the quality of life could bring on the decline if not the collapse of economic life in the inner city.

The Amsterdam plan, experts say, will serve as a test case for other cities because across Western Europe, the competition between man and machine is slowly shifting in favor of the pedestrian. What began as a modest trend in many cities to close off the occasional shopping street is growing into a movement of larger car-free zones.

Medieval town centers, once built for people on foot and a few carts and carriages, have partly reverted back to strollers who in the past were rattled by congestion and noise. Leicester, Cologne, Prague, Strasbourg and Turin, to name just a few cities, have set aside central squares and streets that hug the town hall or the cathedral for pedestrians only. Venice, with its tiny bridges and alleyways, has never been able to accommodate the car.

What is remarkable about Amsterdam is that while it has one of the largest and most intensely used historic city centers of Europe, its plan to curtail traffic is more radical than that of any other regional capital. Moreover, the city held a referendum last March—the first in Amsterdam's history—in which almost 53 percent of the voters backed a plan for a virtually car-free center.

Amid the charming labyrinth of waterways and bridges, city engineers have already built new traffic mazes to convey the message that the car is no longer king of the road. They have turned the Damrak, the ever congested axis between the Central Station and the Royal Palace, into a relaxed avenue with wider sidewalks and new bicycle lanes. On many streets, from the red light district to the popular Leidse Square, cars are being hemmed in by raised speedbumps and intimidating phalanxes of posts. City workers are quietly eliminating parking spots.

"Reconquering Public Spaces"

"We are reconquering the lost public spaces," Mr. Pistor said. "We need them for walking, cycling, shopping and sitting around, for markets, music or other street events."

If fully carried out, the project will affect the heart of the city, the place where Amsterdam grew up around a 13th-century dam in the Amstel River—giving Amsterdam its name—and where a girdle of canals was built to serve the shipping needs of prosperous, 17th-century merchants. The canals never gave the port city enough room to lay out great classic squares or the avenues fashionable in the 19th century, which probably saved the city from even more traffic.

Today, the canal girdle is the most vibrant part of the city, home to 75,000 of the 500,000 inhabitants, and the hub of shops and offices, universities and schools, hotels, restaurants and bars. The restricted traffic zone will be inside this ring of canals, an area of about three square miles, about one-10th of the city proper.

"Every day some 67,000 cars and trucks circulate in the center, almost as many as residents," Dave van Ooyen, a city traffic specialist, said. "We think the most effective instrument to reduce cars is to reduce parking. The idea is to cut parking spaces in half."

Speed Limit to Drop

Other steps planned this year include new speed limits of 18 miles per hour and higher parking meter fees, now $2.25 per hour. The city has increased its roving teams of wardens who slap on wheel clamps and charge a $70 fine for parking violations. Drivers are furious at the new $140 fine for cars that must be towed.

The city says it will expand metro and tram lines and plans garages near the terminals on the city periphery. It also says it will provide more and safer locations to park and repair bicycles to encourage cyclists. Amsterdam already has a head-start: one-third of downtown traffic consists of bicycles.

Ultimately, the plan foresees that apart from taxis, police cars, ambulances and fire trucks, only the disabled and some of the residents will have access to the canal zone. The city council still has to decide how many permits will be available for residents.

Buses and large trucks will be banned, and small business vans will be allowed to load and unload for short periods. But more water taxis and cargo barges could return the canals to the busy arteries they once were.

Business Effect Crucial

How fast and how far the project will proceed, city hall planners say, depends on what the city's economy can sustain. Imposing rules would be easy, they say, but they concede that the crucial issue is how much traffic can be cut without suffocating business activity. The Chamber of Commerce has warned that the inner city could turn into an open-air museum and that a large portion of the center's 80,000 jobs would be lost if the traffic ban became too strict. While many businesses have left in the past for lack of space, Amsterdam's center still has the largest concentration of offices in the Netherlands, accounting for some 55,000 jobs.

"If you want the center to remain the motor of the city, you have to be careful how you squeeze it," Kees ter Horst, an official at the Chamber of Commerce, said. "We say, first put in the public works, the extension of the metro and the trams, before you cut back. Not the other way around."

City planners say they are keenly aware of the need for mobility. "We want to keep the whole mosaic of functions intact, the shops, offices, homes, the cultural life and the nightlife," said Maartje van Os, a city official. "This mix is what makes this city so appealing. So the idea is to keep reviewing and fine-tuning our steps as we go along."

Past Errors Recalled

Planners say they are drawing lessons from past errors, among them those of the 1960s when Amsterdam created a green belt and beyond it built satellite towns. As the suburbs and satellites grew, commerce and jobs followed, and the inner city emptied out and declined. For much of the 1980s, Amsterdam has been renovating its inner city, turning warehouses, fire stations and abandoned school buildings into modern apartments and providing incentives to lure people back.

"We think the satellites were a massive mistake," Mr. Pistor said. "They created enormous traffic flows with the inevitable pollution, accidents, lost time and high energy costs. The new philosophy is to give up the green belts and bring people closer together, to have compact urban centers where people live close to work."

To Amsterdam's relief, four other Dutch cities—Maastricht, Enschede, Leiden and Groningen—are well advanced in plans to curtail downtown traffic. Thirty other towns are debating or starting similar small-scale projects. When Amsterdam was well ahead of everyone, city officials said, businessmen were threatening to leave.

"Companies tried to play different cities off against each other," Mr. van Ooyen said. "They said they want a place where clients and employees can put their car outside the door." But companies needing a lot of cars do not belong in the center, he argued, adding, "Now that we have a national trend to restrict cars in the urban centers, we have more chance of success."

'Traffic More Complicated'

Jan Venema, who has driven a tram across Amsterdam for 15 years, says the new plan, which favors the tram, would not necessarily make things safer. "Traffic is getting more complicated," he said from his high position behind the wheel where he sees cyclists, cars and motorbikes zig-zagging in and out of their designated lanes. He believes the special lanes lull people into a false sense of security.

"Messengers on motorbikes and taxis have the right to pass through some off-limit streets," he said, "but they are the wildest, and people forget that they are there."

How much tenacity will be needed to wean people from their cars is suggested at Amsterdam's maintenance headquarters. Jan Moonen, the director, says his teams are constantly repairing traffic islands, speed bumps and "amsterdammers," as poles and posts to stop cars are known here.

"We find amsterdammers in the canals, drivers knock them over, some people take them home as souvenirs," said Mr. Moonen, adding that 65,000 amsterdammers are now in place in the inner city. This may be hard to believe, he confided, but last year more than 13,000 had to be repaired or replaced. "It will get worse," he predicted. "But we are prepared."

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Technology Tree

No technology exists in isolation.
Individual technologies are part of technological systems.
Technological systems exist in social contexts.
Technological systems modify the societies in which they exist.

—Victor Ferkiss

Directions: Fill in the first blank on the left with an existing technology. In the column headed "Technological System," fill in branch technologies that are intertwined with the stem technology. "Social Systems" are people-oriented systems that are interwoven with the stem and branch technologies. Finally, list at least ten changes in society that resulted from the development of the stem technology.

STEM *Technology*	**BRANCH** *Technological System*	**BRANCH** *Social System*	**FRUIT** *Changes Resulting From the Technology*

Technology Tree developed by the Social Science Education Consortium for their Science, Technology and Society series *Model Lessons for Secondary Social Studies Classes* (1988). Used with permission.

Sample Technology Tree

No technology exists in isolation.
Individual technologies are part of technological systems.
Technological systems exist in social contexts.
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STEM *Technology*	**BRANCH** *Technological System*	**BRANCH** *Social System*	**FRUIT** *Changes Resulting From the Technology*
	Road engineering	Sales people	Increased mobility & speed
	Metal/alloy production	Driver licensing	Drunk driving deaths
	Plastics	Advertising	Family conflict over use
	Petroleum	Parking spaces	Live farther from work
Automobile	Repair networks	Insurance systems	Easy movement of goods
	Rubber Production	Road route selection process	Travel farther for vacations
	Paint technologies	Pollution effects/control	Hectic pace of life
	Glass	Safety	Mass transportation in poor shape
	Electronics	Delivery networks	Health risks higher due to pollution
	Textiles	Financing systems	Greater privacy
	Radio engineering	Physical communications	High employment while the industry grew

Technology Tree developed by the Social Science Education Consortium for their Science, Technology and Society series *Model Lessons for Secondary Social Studies Classes* (1988). Used with permission.

Possible Topics

- Precursors to the automobile: trolley and bicycle
- Steamer cars
- Early electric cars
- Gasoline engine
- Early auto industry: France, Germany, England, America
- Fordism
- General Motors
- Chrysler Corporation
- Henry Ford
- William C. Durant
- Black workers at Ford/early days
- "The Five-Dollar Day" Ford plants
- The family car: courtship; changing women's roles; intergenerational conflict
- Rise of UAW
- Car's influence on national parks
- National infrastructure: highway system; tourist facilities
- The Volkswagen
- Sloanism
- Multinationalization of Ford & GM
- Lee Iacocca
- Holiday Inn Hotel Courts
- Howard Johnson's restaurants
- Economic nationalism and the rise of the Japanese auto industry
- Public transit
- Automobile industry and the Third World
- Fuel economy
- Advertising
- Robotics and computerintegrated manufacturing
- Air pollution problems related to the car
- Noise pollution problems related to the car
- Water pollution problems related to the car
- Solid waste problems related to the car (junk car disposal)
- Statistics, figures, and tables related to the car such as:
    - Number of cars sold
    - Auto ownership by occupation, age and sex of persons arrested for offences involving automobiles
    - Death rates for some motorized transport modes in the United States

LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 2

Objectives

- Students will identify examples of activities which might fall under the legal definition of nuisance.
- Students will be able to write an example of the concept "balancing the equities."

Materials

Copies of handouts:

- Finding the Nuisance
- Balancing the Equities

Time Required

1 class period.

Prior To The Lesson

- Run student copies of handouts.

Background for the teacher

It is helpful in working with the law of nuisance to understand the difference between common law and statutory law. Common law is not written by legislators, but handed down by custom, and made by judges when they decide cases, and write decisions. An explanation from a textbook follows:

> Common law is law made through judicial decisions. Its history has been described as: "Underlying the development of legal theory in the United States is a body of rules and principles relating to the government and security of persons and property which had its origin, development and formulation in England. Brought to the American colonies by people of Anglo-Saxon stock, these basic rules were formally adopted by the states after the American Revolution. Known as "common law," these principles are derived from the application of natural reason, an innate sense of justice and the dictates of conscience. The common law is not the result of legislative enactment. Rather, its authority is derived solely from usages and customs which have been recognized, affirmed, and enforced by the courts through judicial decisions.

"It is important to realize that 'common law' is not a fixed or absolute set of written rules in the same sense as statutory or legislatively enacted law. The unwritten principles of common law are flexible and adaptable to the changes which occur in a growing society. New institutions and public policies; modifications of usage and practice; changes in mores, trade, and commerce; inventions; and increasing knowledge, all generate new factual situations which require application and reinterpretation of the fundamental principles of common law by the courts." (from *Environmental Law Fundamentals*)

Procedures

■ **Ask the students** how they would define the words "public nuisance." Take several responses. Tell the students that the courts have their own definition. Write it on the board or overhead:

> *A public nuisance is an action against the order and economy of the state. Every act unlawfully done and every omission to perform a duty, which act or omission shall annoy, injure or endanger the safety, health, comfort or repose of any considerable number of persons shall be a public nuisance.*
>
> *A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.*
> (from Revised Code of Washington, sections 7.48.130, 9.66.010)

■ **Discuss the definition** by using the student handout, "Finding the Nuisance." Instruct the students to read each statement and write "Yes" or "No" if they think the statement meets the legal definition of nuisance. After the students have made their individual decision, either put them into small groups to share their reasoning or have a whole group discussion.

Answers for the teacher:

- A family living next to a trucking company terminal sued the company. The family said they were ordinary people and that the noise from trucks and loading operations at the terminal located next door to their homes was unreasonable. They claimed they were losing sleep and unable to enjoy living in their home.

The court ruled the truck terminal noises between 11 p.m. and 6 a.m. were unreasonable and that every property owner must make reasonable use of his land so as not to cause unnecessary annoyance to his or her neighbors.

- Nine homeowners living near a rendering plant (that melts down animal fat) brought suit to stop the odor created by the operation of the plant. They claimed the odors from the rendering plant caused them to feel nauseous and to lose sleep at night.

On the witness stand, the plant manager admitted that operation of the plant violated existing law. The court found the plant to be a public nuisance, and the homeowners obtained a court order to close the plant unless conditions causing the nuisance were corrected within a time limit established by the court.

- Four homeowners sued a bakery near their houses, saying that activity there before sunrise (around 5 a.m.) disturbed their sleep.

The court did not find this a nuisance, as it was operated in a reasonable way, and operations did not start that early.

- Owners of a home next to the defendant's manufacturing plant claimed that under specific wind conditions, black smoke settled around their home, causing them discomfort, annoyance, and injury.

The court determined that the operation of the manufacturing plant resulted in an unreasonable use of property, because all the *damage could be avoided by the use of hard coal or by using some modern emission control systems. Although either would involve an increase in expenses, the court held that the safety of persons, generally, is superior in right to a particular use of a single piece of property by its owner, and therefore it was a nuisance.*

- Neighbors sued the city because it allowed the church to operate a shelter for the homeless in their neighborhood.

This is not a real case (although there have been some cases similar to this.) This would probably not be a nuisance, unless the shelter was operated in violation of some zoning codes, or the visitors to the shelter were causing serious problems in the area. This is a good example to let students make arguments for either side.

■ **Tell students** that in deciding whether an activity is a nuisance or not, courts and decision-makers (sometimes a jury) often consider the value of an activity in opposition to the harm it causes. This is called "balancing the equities," or "balancing interests." Ask students to read the examples in the "Balancing the Equities" handout, and describe the interests balanced in each case. Students may either work in groups, with one partner, or individually. Ask them to complete the chart under each example, and then come up with their own example.

Answers for the teacher:

Boomer: In this case, the court found that the cement plant was creating a nuisance, but decided that it was impossible for the operation to become cleaner, at least in the short term, because it was using the best technology available at the time. The court weighed the damage to the plaintiffs against the value of the plant, and refused to shut the plant down. The court said the plant was the core of the local economy because it employed so many. The plaintiffs did receive money damages. Here, the court found the balance weighed in favor of the polluting plant.

Chicago v. Edison. In this case the court refused to shut down the plant because of alleged air pollution. The court found that although the public had a right to clean air, the notion of pure air has come to mean clean air consistent with the locality. The court strictly interpreted the law and said that the City did not prove that the electric company caused substantial harm or injury. The City of Chicago wanted the court to stop the electrical company's Indiana plant from operating. This would have had a broad impact on employment and the local economy.

Prison Case. In this case, which was filed in the District of Columbia, the court never ruled on whether the prison was a public nuisance. The homeowners had cited numerous escapes, riots, and kidnappings at the prison site. The case was ended by procedural motions over whether the District of Columbia could be sued, and the issue of the public nuisance was never decided by the court. This is a good case for discussion.

■ **Finally, tell the students** that the law of nuisance falls under the area of law called "torts. Ask if anyone knows what a "tort" is.

"Tort" is a word used to denote a private wrong or wrongful act that the injured party

may sue for. It is a civil action, not criminal. It comes about from the existence of a general notion that we all have the legal duty to avoid causing harm to others, both intentionally and unintentionally (act of omission). Simply by being a citizen, every person is obliged to fulfill a duty to care for the personal and property rights of others while engaged in daily life. Lack of intent to injure someone does not protect you from a lawsuit.

There are three types of tort claims that are used in cases about the environment: 1-nuisance, 2-trespass, and 3-negligence.

We are going to put the car on trial as a public nuisance. It will be a civil lawsuit. This is a lawsuit brought by private parties, to recover for injuries they have suffered because of actions taken by the defendant. The plaintiffs have the burden of proof. They must prove the car is a public nuisance by a certain amount of evidence, called a preponderance of the evidence. (Explained in Lesson 3)

Extension

Show slides and discuss Diego Rivera's frescoes, Detroit Industry. These magnificent murals were done by the Mexican artist (1886-1957) in the 1930s as a tribute to Detroit industry. It is one of the few major modern works that successfully incorporates representations of functional machines. It took eight months for the artist to complete and "... combines the artist's love of industrial design and admiration for North American engineering with his philosophical opinions about industry's positive and negative contributions to society."

Eighteen slides and a printed narration are available from the Detroit Institute of Arts, 5200 Woodward Ave., Detroit, MI 48202 for $18.

Finding the Nuisance

Public nuisance

A public nuisance is an action against the order and economy of the state. Every act unlawfully done and every omission to perform a duty, which act or omission shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons shall be a public nuisance.

A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

In determining whether an action is a nuisance or not, the court considers the nature of the act itself, and the place and the circumstance surrounding the act. The act must tangibly affect the physical comfort of ordinary people under normal circumstances or conditions. Noise, smoke, dust, odors, other airborne pollutants, water pollutants, and hazardous substances have been found to be nuisances.

Directions: Mark "Y" for yes if you believe the courts would find the following examples as nuisances. Mark "N" for no if you do not think the courts would uphold the examples to be nuisances. Be prepared to give arguments to support your position.

_______ A family living next to a trucking company terminal sued the company. The family said they were ordinary people and that the noise from trucks and loading operations at the terminal located next door to their homes was unreasonable. They claimed they were losing sleep and unable to enjoy living in their home.

_______ Nine homeowners living near a rendering plant (that melts down animal fat) brought suit to stop the odor created by the operation of the plant. They claimed the odors from the rendering plant caused them to feel nauseous and to lose sleep at night.

_______ Four homeowners sued a bakery near their houses, saying that activity there before sunrise (around 5 a.m.) disturbed their sleep.

_______ Owners of a home next to the defendant's manufacturing plant claimed that under specific wind conditions, black smoke settled around their home, causing them discomfort, annoyance, and injury.

_______ Neighbors sued the city because the city allowed a church to operate a shelter for the homeless in their neighborhood.

Balancing the Equities

Directions: Read the facts of the following cases, and decide what the interests are that the court will balance. Complete the chart below each example. Add any additional balancing factors you can think of.

Boomer v. Atlantic Cement Company,
257 N.E. 2d 870 (1970).
A group of homeowners sued a cement plant, saying that smoke, dust and dirt from the plant covered their homes, and that vibrations from blasting at the plant disturbed their peace and quiet. The homeowners claim that their houses are now worth much less. The cement plant employs 300 people and was constructed at a cost of $45,000,000.

Interests of homeowners	*Interests of cement plant*

Chicago v. Commonwealth Edison, 321 N.E. 2d 412 1974.
The City of Chicago sued the largest supplier of electricity for public nuisance, specifically air pollution. The City said that the electric plant was polluting the air in the city, and asked that the plant be shut down.

Interests of City	*Interests of electric plant*

A group of homeowners sued the state that operated a prison near their homes. The homeowners asked that the prison be declared a public nuisance because so many prisoners had escaped and the number of riots and disturbances was increasing, threatening the health and safety of the surrounding community.

Interests of homeowners	*Interests of prison*

The courts were not convinced in two of these cases that the harm caused by the alleged nuisance was so great as to justify forcing them to stop operating. If these facilities shut down, many families would be injured by forced unemployment. *So weighing the equities by the courts resulted in a determination, based on all the evidence presented, in favor of allowing continued operations. This is generally called "balancing the equities."*

Directions: By yourself or with a partner, write a situation that you think illustrates the idea of "balancing the equities." Be ready to share in class.

LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 3

Objectives
Students will:

- Explain the purpose of trial procedures.
- Describe at least one alternative to the trial process.
- Identify the major steps in a trial.
- Name the parties to a case in both a civil and a criminal trial.
- Explain the roles of players in a trial.

Materials
Copies of handouts:

- Trial Process
- Trial Process Worksheet

Time Required
1 to 2 class periods.

Prior to the Lesson

- Run copies of the handout and the worksheet for each student.

Procedures

■ **Pass out handout** and worksheet. Ask the students to read silently the handout, "The Trial Process," and to fill in the worksheet the best they can in the time allotted. Stress that no student is expected to complete the worksheet in the time given.

Give a reasonable amount of time for the attention span of your class, approximately 10 to 20 minutes.

■ **Ask students** to compare answers in groups. Fill in any blanks. Discuss differing answers. Stress that no group is expected to complete the worksheet in the time given.

Give a reasonable amount of time, approximately 5 to 10 minutes.

■ **Read the first section** of the handout, "The Trial Process," aloud. Ask students for their responses on the worksheet which correlates to that section. Continue on section by section. Discuss each section until comprehension is verified.

Extension

Ask the students to find stories in the newspapers about situations that could possibly be tried in court for being a public nuisance to share in class.

The Trial Process

The Purpose

We declared our independence from England over two hundred years ago. At that time we said every person has a free and equal opportunity to pursue life, liberty and happiness. Sometimes one person's pursuit of happiness interferes with another person's. To help with the conflicts this interference can cause, the citizens of this country agreed to certain guidelines for their behavior. These guidelines are what make up our system of laws.

The reasons for conflicts between persons vary. A person might not know or understand the law. A person might choose to deliberately break a law. Laws do not cover every possible situation.

Sometimes one individual comes into conflict with another individual. Sometimes the conflict is between an individual and the government. At other times an individual may offend the general will of the people.

These disputes need to be settled in a way that fits the democratic principles of our society. The resolution might be stating the rights of both parties; determining guilt or innocence; directing one person to make up for harming another; or imposing a fine or sentence as punishment for breaking the law.

A trial is one way to settle disputes. However, going to court usually should be the last resort. People should try to work out their problems. Three common ways of settling disputes without going to court are:

1. **Negotiation** — the parties talk face to face;
2. **Mediation** — the parties talk with the assistance of a third person called a "mediator" who helps them find a common ground on which they can agree to a solution;
3. **Arbitration** — a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.

When these methods fail, parties in dispute sometimes go to trial to find a solution. A trial is called an "adversary process." This means that two or more persons who are in conflict present their arguments and evidence as opponents before a third party who is not involved in the dispute. This third party makes a decision. The third party can be a judge or a judge and a jury.

The Parties

A trial revolves around a dispute involving two or more people. The people who bring their argument to trial are called the "**parties**" to the case.

In a civil trial, one person or group of people is complaining about something another person or group of people did or failed to do. The person who does the complaining is called the "**plaintiff**." The person he/she is complaining about is called the "**defendant**."

Usually both parties will hire lawyers and instruct them to prepare the case and make arguments for them in court.

In a criminal trial, a person is accused of a particular act which the law calls a crime, such as murder or robbery. The person who does the accusing is called the "**prosecutor**." The prosecutor speaks on behalf of the government, which represents the people of the state or nation. The person accused of the crime is called the "**defendant**." Criminal defendants either hire an attorney to represent them, or the state appoints one if the defendant cannot afford one.

The Facts of the Case

Long before the trial actually happens, some argument or incident occurred. The argument or incident involves many facts, which together make up the "**case**." Persons on opposite sides of a case often will view facts quite differently. This disagreement over the facts forms the basis for what is to be decided at trial.

In a trial, the parties present their differing versions of the facts before an impartial "trier of fact," a judge or a jury. The job of the jury is to decide which facts are correct. In trials without a jury, the judge decides the facts.

The Evidence

The judge or jury often needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called "**evidence**."

Evidence may take several forms including:

- **Testimonial evidence** is given by a person, called a "**witness**" who tells the court what he/she saw, heard, did, or experienced in relation to the incident in question. This is the most common way for the judge or jury to learn the facts of the case.

  - **Expert witness** — a special type of witness who has specialized information, based on experience or education. The expert witness helps the jury and judge understand the facts. This witness is not involved in the incident. The expert witness can give medical, scientific, or other instruction to the judge or jury to help decide the case. An expert can give his or her opinion.

- **Demonstrative evidence** includes documents or physical evidence.
  - **Physical evidence** — articles such as weapons, drugs, clothing, etc. that can provide clues to the facts.
  - **Documents** — letters, notes, deeds, bills, receipts, etc. that provide information about the case.
- **Illustrative evidence** helps explain the facts. Charts, graphs, tables, models, and recordings that *illustrate* and summarize the facts are examples of illustrative evidence.

Elements of the Cause of Action

When a plaintiff brings a lawsuit, he or she has a cause of action, like a theory of the case. In tort cases, the plaintiff is claiming that the defendant should be responsible to her because the defendant:

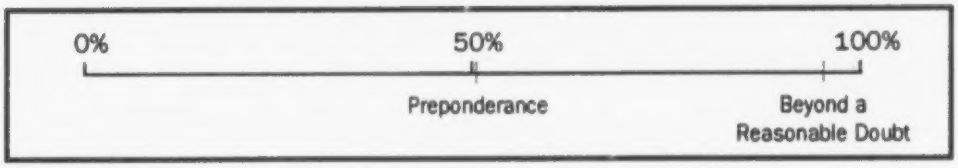
1. Had some duty of care toward the plaintiff,
2. Violated that duty by some action or inaction, and
3. The action or inaction caused injury to the plaintiff.

These are called the *elements* of the cause of action. The plaintiff has to prove each of those elements at the trial.

The Burden of Proof

There is a rule called the "burden of proof." In a civil case, the plaintiff, the person doing the complaining, has the burden of proof of all of the elements of his or her case. This means he/she must convince the judge or jury that the facts are correct by a "preponderance of the evidence," meaning his or her evidence is slightly more convincing than the defendant's. Another way to describe it is "more probably true than not true." This means that at least 50.001% of the evidence supports the plaintiff's side.

In a criminal case, the burden of proof is much higher, because the defendant *may* go to prison if found guilty. Therefore, the prosecutor must convince the judge or jury "beyond a reasonable doubt" that the accused committed the crime. Some say this means the judge or jury must be at least 95% sure that the prosecutor is correct.



Defenses

The complaining or accusing parties have the burden of proving their particular version of the facts. The job of the defense team is to present evidence that prevents the plaintiff from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party.

In civil cases, the defendant will try to show that the plaintiff has not proved all the elements of his or her case. Often, the defendant will have a specific defense. Examples in tort law are assumption of the risk (the plaintiff knew there was a risk and knowingly assumed it); consent (the plaintiff consented to the conduct, so cannot now complain about it); too much time has gone by (called laches); or necessity (the conduct defendant is being accused of was necessary).

Damages and Injunctions

When a plaintiff brings a lawsuit, he or she usually asks the court for either damages or an injunction, or both. Damages refers to the payment of money by the defendant to the plaintiff to compensate the plaintiff for her injuries. For example, in an automobile accident case, the plaintiff may ask for damages to pay for the damaged car, for the medical expenses, for lost wages, and for pain and suffering.

An injunction is an order by the court directing the defendant either to stop doing something or not to do an act in the future. A plaintiff might ask for an injunction to stop the construction of a building that violates the local building code. Courts will generally issue an injunction only when the plaintiff can show that money damages would not be adequate. In deciding whether or not to issue an injunction, the court will balance the equities by taking into account the economic hardship that will result if an injunction is issued.

Preparation for the Trial

Attorneys are responsible for collecting all the evidence that supports the side of the case they are representing and for deciding how to use that evidence at the trial. In general, there should not be any surprises at the trial. Opposing attorneys must let each other know what evidence they have collected. This makes sure the trial is fair.

Steps in a Trial

1. **Opening of the Court** — The clerk of the court opens the court by announcing that the court is ready to begin. He or she also introduces the judge.

2. **Swearing in the Jury** — The clerk of the court or the judge asks the jurors to take their seats. He or she then asks them to swear that they will act fairly in listening to the case.

   The Judge asks Counsel (the attorneys) to introduce themselves.

3. **Opening Statement by the Plaintiff's Attorney** — This lawyer begins by stating his or her name and the plaintiff's name. The lawyer then tells the jury the important information about the case. This includes the parties in the case, the facts that led to the lawsuit, and what the plaintiff wants. The plaintiff's attorney presents the plaintiff's side of the case to the jury.

4. **Opening Statement by the Defense Attorney** — This lawyer begins by stating his or her name and the defendant's name. The lawyer tells the jury that he or she will try to prove that the plaintiff does not have a valid case. The defense attorney then presents the defendant's side of the case to the jury.

5. **Plaintiff's Direct Examination of His or Her Witnesses** — The plaintiff's attorney calls the witnesses for the plaintiff one at a time to the front of the room. The clerk of court asks each witness to swear to tell the truth. The attorney then asks questions of the witness. The questions are based on the facts the witness has to offer.

6. **Defendant's Cross-Examination of Plaintiff's Witnesses** — After each witness for the plaintiff has testified, the lawyer for the defendant has an opportunity to ask questions. During cross-examination, an attorney tries to get the other side's witness to admit something that will help his or her client. The attorney may also try to show that a witness is not dependable, is biased, or does not remember.

7. **Defendant's Direct Examination of His or Her Witnesses** — The defendant's attorney calls the witnesses for the defendant one at a time to the front of the room. The clerk of court asks each witness to swear to tell the truth. The attorney then asks questions of the witness. The questions are based on the facts the witness has to offer.

8. **Plaintiff's Cross-Examination of Defendant's Witnesses** — After each defendant witness has testified, the lawyer for the plaintiff has an opportunity to ask questions of each of the defendant's witnesses. During cross-examination, an attorney tries to get the other side's witness to

admit something that will help his or her client. The attorney may also try to show that a witness is not dependable, is biased, or does not remember.

9. **Judge's Instructions to the Jury** — The judge explains to the jury what the principles of law are in this case. He or she asks the jury to make a fair decision about the case.
10. **Closing Arguments** — Each attorney sums up the main points that help his or her client's case. The closing argument should contain only evidence that was introduced during the trial. The plaintiff's attorney is the first to make a closing argument, then the defense attorney makes his or her closing. The plaintiff then has the opportunity to make a final short statement, called a rebuttal.
11. **Verdict** — The jury talks about the case and makes a decision in the case. In a real trial, the jury leaves the courtroom to reach a verdict. For this mock trial, the jury may either talk about the case and come to a decision in front of the rest of the class, or retire to the jury room. A majority vote of the jurors will decide the verdict.

Trial Process Worksheet

Name ______________________________________

1. What is the purpose of a trial?

2. Describe at least one alternative to the trial process.

3. Place the following steps in a trial in order:

1. ________
2. ________
3. ________
4. ________
5. ________
6. ________
7. ________
8. ________
9. ________
10. ______
11. ______
12. ______
13. ______

A. Closing argument by plaintiff
B. Opening statement by plaintiff
C. Closing argument by defendant
D. Opening statement by defendant
E. Cross-examination of plaintiff's witnesses
F. Direct examination of plaintiff's witnesses
G. Cross examination of defendant's witnesses
H. Direct examination of defendant's witnesses
I. Opening of the court
J. Verdict
K. Judge's instructions to the jury
L. Swearing in of the jury
M. Deliberations by the jury

4. Name the parties to a case in a civil trial.

5. Name two defenses in a civil tort case.

6. Explain the roles of the following:

Attorneys:

Judge:

Jury:

7. What is an injunction?

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 4

Objectives

- Given the stipulated facts and the sworn statements of the case, CarNOT Coalition v. METRANS, the students will demonstrate they understand the case through discussion.
- Students will demonstrate an understanding of the concept of "a preponderance of the evidence" by drawing a cartoon illustrating the concept.

Materials

Copies of handouts:

- Stipulated Fact sheet
- Sworn Statement sheets

Plain paper, drawing materials

Time Required

1 to 2 class periods.

Prior To Lesson

Make copies of Stipulated Fact sheet and Sworn Statement sheets for all the students.

Procedures

■ **Tell the students** that METRANS is being sued by CarNOT (Cars Are Recurring Nuisances which Ought to be Terminated). The suit asks for an injunction banning all cars from within the city limits. METRANS is a city-funded task force. Its chair is a city planner. CarNOT is a private citizens' coalition.

CarNOT alleges that the defendants have endangered the health and safety of the public, including individual plaintiffs, by continuing to promote private vehicle transportation without consideration of the costs to public health and safety.

■ **Pass out** the Stipulated Fact sheet (a summary of the facts.) Have the students read silently, then discuss, making sure all the students understand the facts:

1. What court is the case in?
2. Who is bringing the case?
3. Why?
4. Who is the defendant?
5. What is the cause of action?
6. What do plaintiffs need to prove?
7. What is the defense?

■ **Pass out** the Sworn Statement sheets. Read silently, then read aloud. Through discussion, make sure all the students understand the statements. (Will analyze in more detail in Lesson 5).

Note: The witnesses are really models. You are encouraged to help your class invent their own witnesses with their particular points of view and special expertise. Just remember that there should be no surprises in the trial. This means that your students will need to write sworn statements for each witness they create and they will have to share these statements with the opposing side. Remind your students that they cannot make up new information during the trial. They must stay within the sworn statements for significant testimony. They may invent minor facts while testifying, as long as they do not contradict facts in sworn statements.

Some possible additional witnesses:

Plaintiffs:
- County American Lung Association Director
- Owner of a bicycle shop
- Farmer (whose crops are suffering from effects of smog)
- Parent of newborn baby

Defense:
- Oil Company Director
- Car Dealer
- Real Estate Salesperson
- Mechanic
- Single mother with three children under ten and two jobs

■ **Explain that** the burden of proof lies with the plaintiffs. This means they must prove that the car is a public nuisance by a preponderance of the evidence (more than 50 %). One example is that the scales tip just a little bit toward the plaintiff's side. It can be just 50.0000001 percent, and that is enough.

■ **Pass out** drawing paper. Tell the students they are to draw a cartoon that will illustrate the concept "preponderance of the evidence" so that younger students would understand it.

Extensions

- Have students start making a trial notebook for all trial documents, i.e., the newspaper articles, stipulated facts and sworn statements, opening statements, questions for each witness, exhibits, and closing statements.
- Some teachers may want to show the film *Roger and Me*, a documentary about the auto workers' layoffs in Michigan due to the failing auto industry in the 1980s. (Suggestion: Please preview this film if you haven't seen it before showing it to your class.)

Stipulated Facts

IN THE SUPERIOR COURT, NOVA COUNTY, STATE OF WASHINGTON

CarNOT COALITION (Cars Are a Recurring Nuisance and Ought to be Terminated)	)	
	)	Case No.____________
Plaintiff,	)	
	)	STIPULATED FACTS
v.	)	
	)	
METRANS (Metro Trans- portation Task Force)	)	
	)	
Defendant.	)	

CarNOT COALITION v. METRANS is a civil lawsuit, seeking injunctive relief. CarNOT is a group of private citizens seeking to ban all cars within the city limits. The plaintiff alleges that the car is a public nuisance and violates 9.66.010 of the Revised Code of Washington.

CarNOT specifically alleges that cars "annoy, injure, or endanger the safety, health, comfort, or repose of any of a considerable number of persons." Plaintiff also alleges that the dangers caused by the automobile within the city limits far outweigh the benefits to citizens.

Plaintiff is seeking an injunction to ban all cars within the city limits. The plaintiff also seeks damages for medical expenses of its members due to health problems caused by the car, in the amount of $10,000,000.

METRANS, a city-funded transportation task force, is representing city government in this lawsuit. The defendant denies that the automobile is a public nuisance, and asserts that the benefits far outweigh the costs of driving cars in the city.

Defendant also alleges the defense of laches (pronounced "latches"), and claims that the plaintiff has waited too long to bring this lawsuit, and that the delay has made it impossible for them to provide an alternative transportation system for city residents if an injunction is granted. The defendant also alleges that banning all cars in the city is far too extreme a remedy, because it would severely harm the local economy.

There are three witnesses each for the plaintiffs and for defense:

PLAINTIFFS:	DEFENSE:
Jessie Jordan--apartment dweller who walks to work	Terrel Okat--a third-generation taxi driver and business owner
Prof. R.M. Smythe--university environmental health and safety expert	Dr. Pat Regal--specialist in the Clean Air Act implementation
Blair Evans--3rd year law student who works as a researcher for Columbia University professors	Kit Oliver--city planner, chair of METRANS

Sworn Statement

Jessie Jordan, Witness for the Plaintiff
My name is Jessie Jordan and I live at 309 Eastlake Avenue in the city. I moved to the city 15 years ago from a small farming community in the center of the state. Since I stopped smoking ten years ago, I have made an effort to get lots of exercise. I always enjoyed walking and I especially like the convenience of walking to work. I find it relaxing, energizing, and economical.

In the past few years, however, things have changed. I notice when I arrive at work I no longer feel energized. Instead I have chest pains. I cough a lot and my throat is irritated. I also find I suffer from more colds. Why, I've had pneumonia three times in the past five years! Some days when I get home from work, I have to just lie down and eat ice cubes to soothe my throat.

I've gone to the doctor about these conditions. She never finds anything really wrong but she is worried about my lungs. However, she asked me many questions about my life style. She tried some new tests on me and found traces of lead in my system. I think she found evidence of carbon monoxide, too.

She suspects that since I walk down a sidewalk where there is a major freeway exit to the center of the city, I may be getting sick from carbon monoxide coming from the cars on the street. You see, this street is lined with high-rise buildings and the air gets kind of trapped. I've tried walking other routes, but they have the same problems. And on most days, it doesn't matter where I walk. On the days when smog covers the city, it is impossible to avoid it and still carry on a normal life. I know the television announcers advise that people stay indoors but that's unrealistic. I have to work. I have rent to pay and bills to meet. I can't cocoon myself in my apartment. I don't own a car. It's not my fault. I pay my taxes and live the life of an ordinary citizen. My health shouldn't have to suffer.

When I go away on my two-week vacation to visit my family on the farm I always feel better almost immediately. It seems like I have more energy and I don't feel so run-down. I quit coughing. It seems to me that the source of all my health problems is the pollution caused by the car.

Sworn Statement

Professor R.M. Smythe, Witness for the Plaintiff

My name is Rashi Matrell Smythe. I am a professor at the University of Washington in the Environmental Engineering Department. I have published seven books on environmental health and safety under the name of R.M. Smythe. I live on a houseboat on Lake Union, 23033 Beach Drive.

First of all, I'd just like to say that dirty air is everywhere. Why, in Sao Paulo (Brazil), Athens, Rome, and Budapest, cars have been banned from the city centers because the air is so polluted. Smog has grown in the cities of the United States each year since 1970. More than 150 million Americans now live in areas that exceed EPA (Environmental Protection Agency) standards. Traffic congestion will double in many areas by the year 2000. In many congested big cities, this costs drivers directly. For example, in 1986 drivers spent more than $24 billion dollars in wasted fuel and high insurance rates because of traffic delays.

Dirty air plagues big cities and rural areas around the globe. It usually originates over big, sunny, gridlocked cities. Then it begins to drift downwind. Arizona suffers from pollution from as far away as Los Angeles, as you can see by the pictures of smog that gathers daily over the Grand Canyon.

The chief culprit is the car. And America is particularly guilty. There are an estimated 387 million cars in the world. 83 million of them are found in the United States. Brazil has only 11 million. China, less than one million. Kenya, only 150,000. But cars are very popular, and for nearly everyone, the car is a symbol of status and convenience.

I believe one of the biggest stumbling blocks to cutting down on air pollution is that so far most efforts have been focused on reducing tailpipe emissions. Instead, we should be developing solutions to reduce the use of cars in the first place. Over the past ten years, oil companies, auto industries, and legislatures have haggled over mile-per-gallon increases in fuel efficiency and the raising of speed limits. Much of that effort would have been better spent trying to figure out ways to eliminate dirty emissions and to promote alternative forms of transportation.

We know the human body has limited defenses against smog, which irritates and inflames delicate pulmonary membranes. Smog also lowers the lungs' resistance to infection, colds, and pneumonia. It can trigger asthma attacks and aggravate chronic disease. Worst though, it can whittle away at an individual's lung capacity. Once ground-level ozone is in your system, it may stay there for a week. It can permanently scar lung tissue as badly as cigarette smoke.

Both carbon monoxide and lead are released into the air by cars. Carbon monoxide interferes with the blood's ability to absorb oxygen, thus impairing perception and thinking, and slowing reflexes. Lead, when released into the air, can cause irreversible brain, nerve, and kidney damage, and high blood pressure.

Smog related problems are not just a public nuisance. They are a true health crisis. People may blame their symptoms on stress, late nights, or fast food diets when they feel run down. However, the real cause may be the result of too much dirty air.

(Information taken from *Saving the Earth: A Citizen's Guide to Environmental Action*, "Smog," Will Steger and Jon Bowermaster, Alfred A. Knopf, New York, 1990, pp. 45-63.)

Sworn Statement

Blair Evans, Witness for the Plaintiff

My name is Blair Evans and I am a law student at Columbia University. I live in New York City, 4800 W. Broadway, Apartment 2C. Most recently I have been working on a project funded by the National Science Foundation. My job has been to do legal research for a book, *The Automobile and the Regulation of its Impact on the Environment*. I have become an authority on pollution problems caused by the automobile besides air pollution.

The first problem, which most people know, is noise pollution. We have found that the cumulative effect of exhaust and air intake systems, the engine, the interaction of tires with the road surface, and the "swish" of moving cars raises noise to disturbing levels. The volume and pace of traffic is critical to the total sound. It is congestion, which one could say is common in most cities, that aggravates the noise problem, especially when the sound reflects off the buildings.

While the horn is essential for safety in emergency situations, it is more often abused-particularly in crowded urban areas. Unnecessary use of horns is the real problem, not the sound level they produce.

A second problem is water pollution, especially the disposal of crankcase oil. Nationally, about 1.1 billion gallons of oil are sold each year for automotive use. Of this amount, we discovered that approximately 550 million gallons is used as crankcase oil in passenger cars. We deducted that about 400 million gallons of waste crankcase oil require disposal every year.

Presently, many Americans dispose of this oil by dumping it on the ground. Environmentally, the danger is that the oil will seep into the ground and pollute the water table. The additives in the oil may concentrate in plant life and possibly affect animals and people through the food chain.

Another disposal method is to spray used oil on unpaved roads to stop dust. Besides the possibility of seeping into the water table, oil sprayed on roads runs off with water runoff, contaminating adjacent fields and crops.

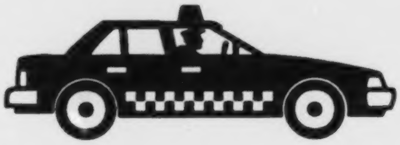
Sometimes people dump their oil into rivers and sewers. This method may pollute waterways and oceans and the metal additives may harm fish and plant life. Other people re-refine their oil. In other words, they take it to collection points where it is collected and made usable again. Even though this is the most environmentally helpful means, it has proven expensive .

A final problem related to the automobile is junk car disposal, known as solid waste. Approximately 9 million automobiles are taken out of circulation each year. Of these, about 8 million are disposed of properly. But about 1 million cars each year are abandoned, causing considerable annoyance. There are a number of safety, fire, and health problems caused by abandoned cars. They become a breeding place for rodents and insects.

However, the chief objection to abandoned vehicles, in my opinion, is that they spoil the view. They are a blight on the countryside and cityscape alike, offending those living in the neighborhood and travelers as well.

(Taken from *The Automobile and the Regulation of Its Impact on the Environment*, Frank P. Grad, et. al., University of Oklahoma Press, Norman, 1975.)

Sworn Statement



Terrel Okat, Witness for the Defense

My name is Terrel Okat and I live at 9602 E. Mercer Drive. I am the owner of Okat's Taxi Company, Terrel's Quick Lunch, and I also work as a driver three days a week. I just want you to know that this is the kookiest thing I've ever heard of—making cars off limits in the city. How do you expect people to get around?

Since cars are my living, I've made a study of car safety. I belong to the Center for Auto Safety, and read a lot about safety standards. I want my customers to arrive at their destination safely, and I want to keep my insurance rates down. Since the National Traffic and Motor Vehicle Safety Act of 1966, safety features have been regulated by the government. Why, 17 standards were issued for 1967 cars, including seat belts, padded visor, padded dashboards, safety door latches and hinges, dual braking systems, and standard bumper heights, just to name a few.

The main problem with safety is that many Americans refuse to buckle up. Seat belts are only used by about 15 percent of Americans while 85 percent of the Germans and 90 percent of Swedes use theirs. By 1990 all new cars sold in the USA were to be equipped with passive restraints, like air bags or seat belts that automatically buckle. Cars have definitely become safer.

But the fuel economy standards that the government is pushing on us can have a serious impact on safety. A well-built, decent-sized car can be perfectly safe in an accident. When the size of cars was reduced in the early '80s, death rates in car accidents went way up—a 43% increase for Chevrolet Camaros and Firebirds that were down-sized, for example. The reduction in a car's weight is directly related to an increase in occupant fatalities.

Besides all that, my brother and I also own a restaurant downtown. If cars aren't allowed into the city, we'll lose half of our customers! Shoppers will choose to go to the suburbs, rather than drive downtown to shop. Speaking for most downtown business owners, I can tell you, this will ruin retail business in our inner city.

I'm a third generation cab driver and a respected member of the downtown business community. I have a right to make a living. Now, it seems to me that this suit is way out of line. Why now? Why not 15, 30, 45 years ago? Seems to me it's a little late to be crying about the car. Our whole society is built around it. You can't just up and decide to get rid of my livelihood. That's un-American!

(Taken from *The Automobile Age*, James J. Flink, MIT Press, Cambridge, 1988.)

Sworn Statement

Dr. Pat Regal, Witness for the Defense

My name is Dr. Pat Regal and I live at 400 E. Apache Drive in Santa Cruz, California. My job the past several years has been to record the effects of the Clean Air Act, and evaluate current technology and development of vehicles that are less harmful to the environment. I helped Congress craft the amendments to the Clean Air Act, both in 1970 and in 1990. I believe that the current Clean Air Act, with the amendments passed in 1990, will be adequate to reduce automobile pollution, even in our most crowded cities, by the year 2003. The government, particularly the Environmental Protection Agency (EPA), should be praised for the leadership it has taken on this issue. Why, airborne lead has been reduced by 90 percent since the adoption of the Clean Air Act in 1970. Most experts would agree that if this law had never been passed, skies across the country would today be even more shrouded by a thick blanket of man-produced smog.

The 1990 amendments to the Clean Air Act will cut auto emissions even more drastically over the next 20 years, by reducing hydrocarbon emissions by 30% by 1998. The Act requires that nitrogen oxides also be cut - by 60% by 1998. Emissions will be cut another 50% by 2003. In addition, cleaner fuels will be introduced, such as methanol, ethanol, or natural gas.

You know, technology presently exists to clean up the air. Theoretically, if every car in the world used available pollution-reducing technology—and was in good repair—smog would decrease. It's not the government's fault that the air is dirtier today than a few years ago. It's really the fault of ordinary citizens. There are many more cars on the road today, being driven many more miles. There was an increase in the number of cars of 25% from 1977 to 1988.

Also, the technology exists to produce fuel-efficient, safe cars. Things like reducing weight, front-wheel drive, 4-cylinder/4-valve engines, 4-speed automatic transmissions, tires with reduced rolling resistance, and improved aerodynamics can make a tremendous difference. General Motors has built a car that gets 100 miles to the gallon at a speed of 50 m.p.h. Electric cars are another option, but then the power plant producing the electricity probably pollutes as well.

It is going to take time for these new prototypes to be developed into commercially available options. Banning the automobile from cities is not the answer right now, as we do not have the alternatives in place yet. We just need more time.

And remember, it's not just cars that contribute to dirty air. Don't forget that aerosol sprays, barbecue lighter fluid, dry cleaning solvents, and oil-based paints all emit chemicals that combine to create smog. It may be that efforts to clean up our air in the next decade may affect what is under your sink more than what's in your driveway!

Just remember, although government and industry have controlling roles in the problem of dirty air, the general public must shoulder much of the responsibility. Although voters say they want clean air, they aren't willing to pay for it. They don't want restrictions on driving and they don't want tougher, costlier auto-emission standards. Let's face it, you get what you pay for!

(Some information from *Saving the Earth: A Citizen's Guide to Environmental Action*, "Smog," Will Steger and Jon Bowermaster, Alfred A. Knopf, New York, 1990, pp. 45-63.)

Sworn Statement

Kit Oliver, Witness for the Defense

My name is Kit Oliver and I live at 4102 92nd SE.
I am employed as a planner for the city. One of my assignments is to chair a task force funded by the city council that deals with transportation issues. We have become known over the years as METRANS, short for Metropolitan Transportation Task Force. This task force is well respected in the community. We work hard and I believe we do a good job.

The demands posed by the motor vehicle have been a driving force in city planning. Since after World War II, our cities have been planned and designed around the private car. Government policies have encouraged road building and the use of cars over public transport. For example, the federal gasoline tax goes almost exclusively into road building. Only one-ninth of that tax goes for mass transit. Even the U.S. tax code encourages the use of private cars, by giving a break to employers who provide free parking for their employees, but only a pittance to employers who provide transit passes to employees.

As the number of automobiles has grown, so have our strategies to make the city a safe and healthy place for all. We improved the roads and expanded parking facilities. When we did that, we also developed parks and open spaces for citizens to enjoy. Why, we even have put buildings and parks over freeways, hiding them from view. We have taken all adequate measures to balance the needs of individual citizens with the demands of a mobile public.

You also need to know that METRANS is on the verge of announcing a new transit system that won't rely on the private car. We have plans underway to address the problems of pollution, but these won't realistically be a reality for another 20 years. The car cannot be banned from the city limits until we complete our new system. How would suburban workers get to their jobs in the city? We just don't have the transportation systems in place to serve them at this stage. The health of the economy of our region is at stake here.

Think of the benefits of the car as opposed to the hazards named by the plaintiffs. Thousands of jobs rest on the immediate and personal use of the car. People maintain a healthy independence by not having to wait for public transport. Our cities would be much more crowded, if citizens couldn't commute easily from the suburbs. Families with children rely on the car to do grocery shopping and to travel with little ones and all of their baby gear.

We have acted in good faith to solve the problem of the car and I believe we have a plan that will do the trick. Our plan is one that balances fairly the car's access to the inner city. Give us time to give this plan a chance.

LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 5

Objectives

Students will:

- Describe the main arguments in favor of each side of the case.
- Identify facts that support or weaken each major argument.
- Examine law applicable to their case.
- Write an opening statement for one side of the case, describing the theory of the case.

Resource

Two attorneys or law students (optional).

Materials

- Quick Book of Information About Cars from Lesson 1.
- Additional research sources.
- Copies of handout "Applicable Law."

Time Required

1 class period.

Prior to the Lesson

Divide the class into two groups, balancing strengths and weaknesses.

Procedures

■ **Assign the class** into two team groups to be either plaintiff or defendant. Give each student a copy of the "Applicable Law" handout. Using the Sworn Statements and Applicable Law handouts, each team is directed to discuss the following points:

- What does our side want to achieve in this case?
- How will we accomplish this goal?
- What evidence do we have to help us?
- What evidence do we have that hurts us?
- What can we claim we will prove in the opening statement?
- What law do we have that helps us?

Note: If attorneys or law students are present, ask them to *facilitate*, not *direct* the group discussion.

■ **Give the groups** about fifteen minutes to work. Then, explain that the goal is for each side to develop a "theory of the case." This means each side should be able to state in one or two sentences why they should win.

> For example, the plaintiffs are alleging that the defendants have endangered the health and safety of the public, including individual plaintiffs, by continuing to encourage the use of private vehicles without consideration of the costs to

public health and safety. They must prove that the car is a public nuisance by a preponderance of the evidence.

The defense's theory *may* be that the cost to the local economy of banning the car from the city far outweighs the cost to the health and safety of citizens, and that they have taken all presently available measures to address the problems, and plans are underway to address the problems.

They may also allege good faith in attempting to solve the problem, and ask the court to weigh the benefits of the car as opposed to the hazards claimed by the plaintiffs. (Balancing the equities.)

The defense may also allege the defense of laches. The public has known for years of the dangers associated with the use of the automobile. By not bringing this action at an earlier time, the plaintiffs have made it very difficult for the defendants to adequately defend their position.

■ Instruct the groups to brainstorm the general ideas for their opening statements. Tell them that the opening statement is their first chance to tell the jury about their case. The opening statement should state the facts of the case and develop the theory of the case. Exhibits may be used to help the jury understand.

Discussion should focus on:

- What are the most important facts we want to tell the judge and jury in our opening statement?
- What evidence should we stress?
- What evidence do we need to explain?
- What decision do we want from the jury?
- How will we ask for that?

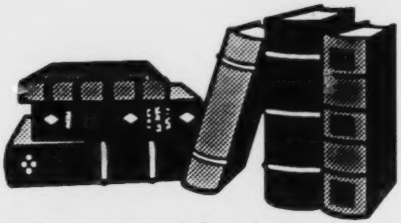
Use butcher paper to record ideas. Attorneys or law students can help keep the students on course.

■ **Tell students** to write an opening statement. On the day the assignment is due, each student should get a chance to read the prepared statement to his/her team. The team should decide which statement is best, or which portions of various statements might be used in combination.

Extension

Ask each student to create either a piece of demonstrative or illustrative evidence to help their side in the trial.

Applicable Law



Statutes:
R.C.W. 7.48.130, 9.66.010. Public nuisance.

A public nuisance is an action against the order and economy of the state. Every act unlawfully done and every omission to perform a duty, which act or omission shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons shall be a public nuisance. A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

Cases

- *Boomer v. Atlantic Cement Co.*, 26 N.Y. 2d 219 (1970). A group of homeowners sued a cement plant, saying that smoke, dust and dirt from the plant covered their homes, and that vibrations from blasting at the plant disturbed their peace and quiet. The court valued the homeowners' loss at $185,000. The cement plant employed 300 people and was constructed at a cost of $45,000,000.

  In this case, the court found that the cement plant was creating a nuisance, but decided that it was impossible for the operation to become cleaner, at least in the short term, because the plant was using the best technology available at the time. The court weighed the damage to the plaintiffs against the value of the plant, and refused to shut the plant down. The court said the plant was the core of the local economy because it employed so many. The plaintiffs did receive money damages. Here, the court found the balance of equities weighed in favor of the polluting plant, but still compensated the homeowners for their loss.

- *Chicago v. Commonwealth Edison* 24 III. App. 624 (1974). The city of Chicago sued the largest supplier of electricity for public nuisance, specifically air pollution. The city said that the electric plant was polluting the air in the city, and asked that the plant be shut down. In this case the court refused to issue an injunction to shut down the plant, despite the alleged air pollution. The court found that although the public had a right to clean air, the notion of pure air has come to mean clean air consistent with the locality. The court strictly interpreted the law and said that the city did not prove that the electric company caused substantial harm or injury. The city of Chicago wanted the court to stop the electrical company's Indiana plant from operating. This would have had a broad impact on employment and the local economy.

Defense of "Laches"

Laches is based on the failure of the plaintiff to do something that should have been done earlier. It is the failure to claim or enforce a right at a proper time. Generally three things must be proved for the defense to be successful. The defendant must show: a) a delay in asserting a right or claim, b) the delay was not excusable, and c) there was undue prejudice to the party against whom the claim is asserted (in other words, the defendant will have a hard time defending the case because of the delay).

Legal Remedies

The legal term "remedy" refers to the relief or action that the plaintiff asks the court to grant to compensate for any injury caused by the defendant. In a lawsuit claiming a public nuisance, the plaintiff can ask the court for damages, an injunction, or both.

Damages refers to the payment of money by the defendant to the plaintiff to compensate the plaintiff for her injuries. For example, in the *Boomer* case, the homeowners asked for both an injunction to stop the plant from operating, and for damages to compensate them for the loss of value to their homes. The court chose to award damages because it would affect too many other people to close the plant.

An injunction is an order by the court directing the defendant either to stop doing something or not to do an act in the future—to stop operating the cement plant, for example. Courts will generally issue an injunction only when the plaintiff can show that money damages would not be adequate. In deciding whether or not to issue an injunction, the court will balance the equities by taking into account the economic hardship that will result if an injunction is issued. This is what the court did in both the *Boomer* case and the *Commonwealth Edison* case.

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 6

Objectives

- The students will identify the responsibilities of each of the players in the courtroom.
- As examiner attorneys, the students will write a logical sequence of direct or cross-examination questions designed to achieve the purpose of the witness examination.
- As attorneys assigned to the opening statements and closing arguments, the students will outline the high points of the ideal opening statement and closing argument for their respective sides.
- As witnesses, the students will recall from memory the important points made in the witness affidavit and respond correctly to possible direct and cross-examination questions.
- As clerk, bailiff, courtroom artist, court reporter, and newspaper reporter, the students will be responsible for their assigned duties.
- As jury members, the students will create an identity for themselves when deciding the case.

Materials

Copies of handouts:

- Role Responsibilities
- Steps in a Trial
- Plaintiff and Defense Worksheets
- Role Sign-Up sheet (only need 1 copy)

Time Required

4 to 6 class periods.

Prior to the Lesson

- Decide whether to invite another class to be the jury, or have members from your class who do not have active roles serve as the jury. If you choose to use members of your class, do not assign roles too early, as jury members may lose interest. Once you determine who will be on the jury, encourage those students to create identities for themselves.
- Run copies of the handouts.
- Assign students to specific roles and groups. Complete Sign-Up Sheet.

Procedures

■ **Pass out copies** of the handouts, Role Responsibilities and Steps in a Trial. Read in class and discuss. Play "Who Am I?"

> **"Who Am I" Game Directions** (similar to 20 Questions). Choose a student to sit in the front of the class. Secretly assign the student one of the roles from the Role Responsibilities reading. Using their Role Responsibilities reading, the

rest of the students ask questions which can be answered by either "yes" or "no." (Allow the student in front to use his/her Role Responsibilities reading. You may have to prompt at first.) The class gets unlimited "yes" answered questions to identify the role but only four "no" answers before they lose the game. Choose another student to come up to try to "stump" the class. Play enough times that the students demonstrate they are able to put roles and responsibilities together quickly and accurately.

■ **Tell students** what their specific roles are, using the Sign-Up Sheet. Each witness should have an alternate, so two students are assigned to each witness role.

Be sure to emphasize that until the actual trial, the class is still working in two teams and the members of each team need to be supportive and productive, i.e., quizzing witnesses to help them practice, writing questions with the attorneys, searching facts, devising strategies for success.

■ **First, have each team** begin to complete their worksheet as a group. Each student should have a copy and add to it, as they continue to develop their case.

■ **Have the students** work in teams of five to six, focusing on either witness statements, drafting questions, or opening/closing arguments. For example:

The plaintiff team (half the class) will break into three groups of four to six students each. One group will be the Witness group 1-P. They will take turns being the witness role they've been assigned and other students will take turns asking them questions. R.M. could go first and the other students drill him/her, asking all the questions they can think of. Students then take turns playing their witness role, including the alternates. Everyone asks questions.

The second group, 2-P, will be the examiner attorneys, who work together on the questions for each witness. (Those assigned to jury or clerk and bailiff roles can help in either this group or the attorney group working on statements.)

The third group, 3-P, will work on drafting opening statements and closing arguments.

■ **Make similar assignments** for the defendant's team. After one or two class periods, have 2-P and 2-D work with witnesses. 2-P and 2-D will also work on cross-examination questions, with attorneys on each side working together with witnesses. Have 3-P and 3-D practice delivering opening statements and closing arguments.

■ **Instruct all students** to read the case materials again now that they know their assigned parts. Identify and study the particular parts of the case materials applicable to their specific roles. Update their worksheet.

Role Responsibilities

Judge
The judge is the person who is in charge of the court. He or she makes sure that the trial is fair and orderly. The judge sees that both sides of the case have a fair chance to present their case. Then the judge tells the jury what the principles of law in the case are.

Jury (12)
The people on the jury listen carefully to the statements of the witnesses. The jurors think about the facts a witness tells to see if they make sense and if they agree with what other witnesses say. Each juror also listens to the opening statements and closing arguments of the lawyers. At the end of the trial, they will vote if the plaintiffs have proved their case by a preponderance of the evidence. Ten of the 12 jurors must agree.

Jury Foreperson
Before they deliberate, the jurors will pick one person to be the foreperson. This person will lead the discussion. Then he or she will announce the verdict of "For the Plaintiff" or "For the Defendant" to the court. (Remember, in a civil case the verdict is not "guilty or "not guilty". Those terms are used in a criminal case.)

Witnesses (6 to 12 with alternates)
A witness is a person who knows facts about a court case. A witness answers the questions the attorneys ask in court. A witness is sworn to tell the truth. The attorneys decide which witnesses they want to question. In a mock trial, the witnesses should report the information from the sworn statements.

Plaintiff Attorneys (3 to 6)
These lawyers work together to bring the plaintiff's case before the court. They must prove that the car is a public nuisance by a preponderance of evidence. The burden of proof rests with them. This may be done by bringing credible witnesses before the jury. They may also use scientific evidence, either physical or illustrative. The plaintiff attorneys need to show that their clients, as well as the general public, have suffered health and safety risks.

Some helpful questions to consider:

- What facts from witnesses can you use to show that the car endangers the health of the public?
- What facts from witnesses can you use to show that the car endangers the safety of the public?
- What facts can you show that the dangers of the car outweigh the benefits?
- What are all of the dangers?
- How can you show that you did not delay in bringing this case?
- How can you show that even if you did delay, it did not make it impossible for the defendant to defend the case?

Defense Attorneys (3 to 6)
These attorneys work together. They represent or speak for the people being sued. They try to show enough evidence to persuade the jury that their verdict should be

in favor of the defendants. Their job is to argue that their clients are not responsible for the plaintiff's injuries.

Some helpful questions to consider:

- What facts can you show that the car is not a danger to the public?
- What facts can you show that the benefits of the car outweigh the dangers?
- How can you show that the plaintiff waited too long to bring this lawsuit?
- How can you show that there was no reason to delay?
- How can you show that the delay has made it impossible for you to defend the case?

Clerk of the Court
The clerk is in charge of time-keeping, making sure that each part of the trial is kept to set limits.

These limits are as follows:

- **Opening Statements** — 4 minutes each
- **Direct Examination** — 7 minutes each
- **Cross-Examination** — 4 minutes each
- **Closing Arguments** — 4 minutes each

If, during direct examination or cross-examination, an attorney objects, the clerk should stop the clock until the judge makes a ruling.

The clerk should make time cards that read "2 MIN," "1 MIN," and "0." Hold up these cards to the judge and to the attorney who is talking to let them know how much time is left. It is up to the judge to enforce the time limit.

Bailiff
The bailiff's job is to make sure the trial runs smoothly. First, the bailiff announces the court is ready to begin: *All rise, the Superior Court of ________ County, State of Washington, is now in session, the Honorable Judge ________ presiding.*

The bailiff marks all exhibits for identification as "Plaintiff's Exhibit #1, 2, 3, etc." or "Defense Exhibit #1, 2, 3, etc." The bailiff keeps track of these on a piece of paper.

The bailiff swears in each witness as he/she is called to the stand. Raise your right hand, ask the witnesses to raise their right hand and ask: *Do you swear or affirm that the testimony that you are about to give is the truth and nothing but the truth?*

The bailiff escorts the jurors to the jury room (if they leave the courtroom) and lets the judge know when the jury has reached a verdict.

Court Reporter
The court reporter keeps a written or taped record of the trial. If someone has a question, for example, about what a witness said, the court reporter reads what the witness has said. In our trial, the court reporter will not write down everything that is said. If someone takes this role, they can take notes on what was said.

Courtroom Artist
The courtroom artist draws quick sketches of the people in the trial to be published in the newspapers.

Newspaper and/or TV Reporters
These individuals take notes and do interviews to report to the general public on the progress and outcome of the trial.

Steps in a Trial

The Opening Statements
This is the first time the attorneys for each side get to tell the judge and jury about what happened to their clients. The first impression is very important. The attorneys should paint a picture of the case from their unique points of view.

Opening statements should include:

1. A summary of the facts according to each party.
2. A summary of the evidence that will be presented at the trial, keeping in mind the theory of the case.
3. A statement regarding what the party hopes to get out of the trial.

The Direct Examination
After the opening statements, the process of "witness examinations" begins. The plaintiffs present their witnesses first. Then the defense presents theirs.

A witness is called to the stand. The attorney who is calling the witness stands and says: *I call Jessie Gordon to the stand, Your Honor*. The witness comes forward, and is sworn in. Direct examination begins with: *State your name please. What is your address? What is your occupation?*

The attorney then asks a series of questions The purpose of these questions is:

1. To get the witness to tell a story, reciting what he/she saw, heard, experienced, or knew about the case.
2. To ask only for facts, not opinions (unless the witness has been declared an "expert."

The questions must be "open-ended" questions, that ask who, what, where, when, how, or why? They should not be "leading questions" that suggest the answer. For example: It is improper to ask on direct examination, "Jessie, you suffer from chest pains due to the pollution caused by cars, don't you?" The proper way to ask the question would be, "Jessie, how does living in the city with lots of cars affect your health?"

The Cross-Examination
The cross-examination is designed to show the judge and jury that a given witness should not be believed because:

1. He/she cannot remember the facts.
2. He/she did not give all the facts in direct examination.
3. He/she told a different story at some other time.
4. He/she has a reputation for lying.
5. He/she has a special relationship to one of the parties (maybe a relative or close friend) or bears a grudge toward one of the parties.
6. He/she did not really have a chance to see clearly what they are testifying about.

Leading questions *should* be asked in cross-examination. For example: On cross-examination, the defense attorney might ask

Jessie: "Isn't it true that you smoked cigarettes for years? Could that not be the source of your health problems?"

Note: At the close of cross-examination the attorney who conducted the direct examination may do a "redirect." A redirect examination follows the same rules as the direct. However, the questions are limited to the subjects discussed in the cross-examination. On redirect the attorney can allow the witness to explain answers given during cross-examination.

The Closing Arguments

The purpose of the closing arguments is to convince the jury that the evidence presented is sufficient to win the case. The closing arguments should include:

1. A summary of the evidence presented that is favorable to the presenting attorney's side.
2. Any charts or exhibits that help the jury understand their side.
3. A legal argument to show how the law requires the judge/jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing.
4. Explanations of the other side's evidence or testimony that reduce or lessen the strength of the other side's case.
5. *May not* include new facts that did not come up during the trial.

Plaintiffs' Worksheet

What evidence do we have that shows that:

1. The automobile endangers the safety, health or comfort of a considerable number of persons within the city?

2. The dangers associated with using the automobile within city limits outweigh the benefits?

3. CarNOT did not wait too long to bring this lawsuit?

Defendants' Worksheet

What evidence do we have that shows that:

1. The car is not a danger to the public.

2. The benefits associated with the automobile outweigh the dangers.

3. The plaintiffs waited too long without good reason to bring this lawsuit.

4. The delay made it impossible for us to come up with an immediate plan for alternative urban transport.

5. Even if the car does injure public health and safety, closing the city to cars would be too damaging to the local economy.

Role Sign-up Sheet

PLAINTIFF

1-P Witnesses

Jessie ____________________

Alt. ____________________

R.M. ____________________

Alt. ____________________

Blair ____________________

Alt. ____________________

2-P Examiner Attorneys

Direct Jessie ____________________

Direct R.M. ____________________

Direct Blair ____________________

Cross Terrel ____________________

Cross Pat ____________________

Cross Kit ____________________

3-P Opening and Closing Attorneys

Opening ____________________

____

Closing ____________________

____

Rebuttal ____________________

Clerk ____________________

Bailiff ____________________

Newspaper/TV Reporter ____________________

DEFENDANT

1-D Witnesses

Terrel ____________________

Alt. ____________________

Pat ____________________

Alt. ____________________

Kit ____________________

Alt. ____________________

2-D Examiner Attorneys

Direct Terrel ____________________

Direct Pat ____________________

Direct Kit ____________________

Cross Jessie ____________________

Cross R.M. ____________________

Cross Blair ____________________

3-D Opening and Closing Attorneys

Opening ____________________

____

Closing ____________________

____

Courtroom Artist ____________________

Court Reporter ____________________

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 7

Objectives

- Students will identify different types of evidence to use in the trial.
- Students will read the kinds of standard objections.

Resource

Attorney or law student (optional)

Materials

Copies of handout "Standard Objections."

Time Required

1 class period (may be combined with Lesson 8).

Prior to the Lesson

- Run enough handouts for everyone in class.
- Invite attorney or law student to teach this lesson. Brief him/her ahead of time.

Procedures

■ **Just before the trial**, introduce this lesson. While complicated rules are used to regulate proof in American trials, the students need some understanding of their scope and sequence. A lawyer or law student is an excellent resource for this lesson.

■ **Review different types** of evidence—testimonial, demonstrative, and illustrative. Discuss in teams the best representatives of each type that can be used at the trial. Be sure specific people are responsible for creating pieces of demonstrative and illustrative evidence. Check with the attorney or law student and get their reaction to the exhibits students are preparing.

■ **Pass out** the Standard Objections handout to the students. Ask the attorney or law student to go over each of the objections presented and to give a little vignette about when one might use each to their advantage. Ask the attorney to share the strategy of objections and responses to objections. Be sure he/she talks about the etiquette of making an objection. (Stand, make your objection before the witness answers the question, state the reason for the objection, speak to the judge, and do not argue with the other attorney.) If time permits, encourage some role playing of the different types of objections with the attorney playing one of the roles with the students.

Standard Objections

An attorney can object any time she or he thinks the opposing attorneys are attempting to introduce improper evidence or are violating the rules of evidence, or that witnesses are giving improper evidence.

The attorney wishing to object should *stand up* and do so at the time of the violation. When an objection is made, the judge will ask the reason for the objection.

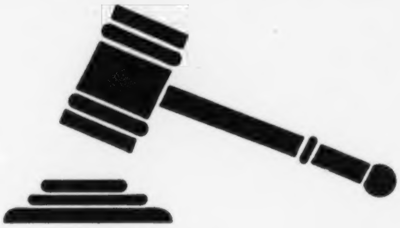
Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge.

The judge will then decide whether the question or answer must be discarded because it has violated a rule of evidence ("objection sustained") or whether to allow the question or answer to remain on the trial record ("objection overruled").

Irrelevant Evidence
"I object, Your Honor. This testimony is irrelevant to the facts of the case."

Leading Questions
"Objection. Counsel is leading the witness." (This is only objectionable when done on direct examination. Leading questions are proper during cross-examination.)

Hearsay
"Objection. Counsel's question/the witness' answer is based on hearsay." Hearsay is a statement made outside of the courtroom. With certain exceptions, statements that are made outside of the courtroom are not allowed as evidence if they are offered in court to show that the statements are true.



The most common hearsay problem arises when a witness is asked to tell what another person said to him or her.

There are many exceptions to the hearsay rule. Two of the most common are:

1. That a witness may repeat a statement made by either party in the case if the statement contains evidence that goes against his or her side; OR
2. If a person's state of mind at the time of a certain event is important, any statements made about that event at the time the event occurred concerning the speaker's intent, knowledge or belief will be admissible.

Firsthand Knowledge
"Objection, Your Honor, Mr. Jordan was not at the meeting, and does not know what happened there." Witnesses must testify about things that they have directly seen, heard or experienced.

Ultimate Issue
"Objection, your honor, the witness is testifying about the ultimate issue in the case." No witness may give an opinion about how the case should be decided.

Opinion
"Objection. Counsel is asking the witness to give an opinion." Unless it is within the common experience of people to form an opinion on the subject, opinions are not allowed.

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Expert witnesses may give opinions, if they explain the basis for the opinion, which is called "laying a foundation." An expert witness is someone who by training or experience has special knowledge in the case.

Argumentative Question
"Objection. That question is argumentative." (Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner.)

Speculation
"Objection. Counsel is asking the witness to speculate in order to answer the question."

Special Rule for Mock Trials
An opposing witness cannot create new facts that contradict facts in the sworn statements. Witnesses may create minor details. If you believe a witness has gone beyond the information provided and is providing new information that is totally out of character and *will change the outcome of the trial*, use the following objection: "Objection. The witness is creating material fact which is not in the record."

Hints on Objections
Only object when you are *sure* there is a reason and you have a *specific* objection in mind. Remember, too many objections during a trial are objectionable!

Only one attorney should stand and object at a time. The attorney assigned to do the direct or cross-examination of a particular witness shall also raise objections when the opposing side conducts their examination of that witness.

If the judge rules against you on a point in a case, take the defeat gracefully and act cordially toward the judge and the other side. Don't be afraid to object again. Do not, however, thank the judge for the ruling.

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Car on Trial

Lesson 8

Objectives

Students will:

- Conduct a mock trial, correctly following the sequence of steps in a trial and employing good technique for each role.
- Make complex prepared oral presentations as attorneys and witnesses.
- Demonstrate skill in listening, rapid critical analysis, and extemporaneous speech.
- Demonstrate knowledge of the rules of evidence and procedure.
- Demonstrate knowledge of the law applicable to the case.

Resource

Invite a judge, attorney, or your principal to be the judge for the trial. An Agenda for the judge, outlining exactly what to do, is included in this lesson.

Materials

- Mock Trial Administrative Checklist.
- Agenda for judge.
- Seating chart for judge.

Time Required

1½ class periods. (If combined with Lesson 9, two class periods.)

Prior to the Lesson

- Make a copy of the Checklist. Check your preparation against the list. Complete the seating chart for the judge.
- Make final arrangements for the jury. If it will be members of your class who do not have roles in the trial, encourage each person to use the persona they identified during preparations
- Get the Agenda and the stipulated facts to the judge prior to the trial.
- Make name plates for attorneys so that judge can identify them.

Procedures

■ **Proceed with the trial**. Good luck!

Mock Trial Administrative Checklist

These are tasks the teacher should check off as accomplished. Some are noted as "optional"-all others are necessary for successful trials.

- ☐ Trial selected.
- ☐ Time-frame determined (dates for each lesson and the trial itself).
- ☐ Lesson plans adapted.
- ☐ Materials selected for students.
- ☐ Materials copied for students.
- ☐ Students' preparation begun.
- ☐ Court field trip date set (optional).
- ☐ Attorneys or law students identified to help (optional).
- ☐ Attorneys invited (optional).
- ☐ Attorneys briefed (optional).
- ☐ Judge identified (actual judge, attorney, school board member, principal, teacher). For assistance in finding a judge or attorney, contact your local Bar Association, or the Office of the Administrator for the Courts (206) 753-3365.
- ☐ Judge invited.
- ☐ Room selected.
- ☐ Microphones ordered (for larger rooms only).
- ☐ Invitations sent to other classes, school board, administrators, parents (optional).
- ☐ Jury selected/instructed
- ☐ Judge's robe (an academic gown will suffice), gavel, etc. obtained.(optional).
- ☐ Name plates for attorneys.
- ☐ Seating chart completed.
- ☐ Students' preparation completed.
- ☐ Trial conducted.
- ☐ Trial debriefed.

Agenda

Mock Trial Enactment

1. Bailiff calls court to order as Judge enters.
2. Judge announces case of CarNOT Coalition v. METRANS and reads aloud these instructions:

This is a civil case brought by CarNOT Coalition, a group of private citizens, against METRANS, a city transportation task force. CarNOT claims that the automobile is a public nuisance because it endangers the health and safety of the general public. They are seeking an injunction banning all cars within the city limits.

METRANS, the defendant, a city-funded transportation task force, denies that the automobile is a public nuisance. It also claims that even if the automobile were a nuisance, the benefits to citizens from the use of the automobile far outweigh the dangers.

The defendant also has raised the defense of laches, claiming that the plaintiff's delay in bringing this lawsuit was unreasonable and has caused them undue prejudice.

The bailiff will now swear in the jury.

(Bailiff: "Will the jury please rise and raise your right hands? Please indicate your agreement by saying 'I do.' Do you swear or affirm that you will base your decision solely on the evidence presented before you in this case, not allowing any prior class work to influence your final decision?") After the bailiff swears in the jury, tell the jury to be seated.

The burden of proof in this case is on the plaintiff, and is by a preponderance of the evidence.

The case will now follow in this order. First the plaintiff will make an opening statement, outlining the evidence to be presented on behalf of the plaintiff's case. The defense lawyer will then make an opening statement, outlining the defense case. Second, the plaintiff will introduce evidence. At the conclusion of the plaintiff's evidence, the defense will introduce evidence. Third, after all the evidence has been presented, I will give you more instructions, after which the lawyers will make closing arguments. Then you will go to the jury room, select a foreperson and decide on your verdict.

3. Judge asks counsel to introduce themselves.
4. Plaintiffs' opening statement. (Time for each activity is tracked by clerk who notifies Judge and lawyer of remaining time by holding up cards indicating "2 MIN," "1 MIN", and "0" remaining.)
5. Defense opening statement. (No reservation to end of Plaintiff's Case in Chief.)
6. Plaintiff's case-in-chief consists of three witnesses:
    - Jessie Jordan
    - Professor R.M. Smythe
    - Blair Evans

    (Note: Bailiff, not Judge, swears in witness.)
7. Defense case-in-chief consists of three witnesses:
    - Terrel Okat
    - Dr. Pat Regal
    - Kit Oliver

8. After all of the testimony, the Judge then reads aloud the closing instructions to the jury:

The plaintiff, CarNOT Coalition, has the burden of proving its case by a preponderance of the evidence. This means that you must be persuaded, considering all of the evidence in the case, that a proposition is more probably true than not.

CarNOT must have proved the following:

- *That the automobile endangers the safety, health, comfort or repose of a considerable number of persons;*
- *That the dangers associated with the use of the automobile within the city limits outweigh the benefits.*

(If the defense has introduced evidence regarding laches:) *The defendant has claimed the defense of laches. Laches is based on the failure of the plaintiff to do something that should have been done earlier. For the defendant to prevail on the defense of laches, it must show:*

- *A delay by the plaintiff in asserting the right or claim,*
- *The delay was not excusable, and*
- *There was undue prejudice to the defendant, in other words, the defendant was unable to adequately defend its case because of the delay.*

Conclude with: *When you go to the jury room, you should first pick a foreperson. It is his or her duty to see that discussion is carried on in an orderly fashion, that the issues are fully and fairly discussed and that every juror has a chance to participate.*

Ten of the twelve jurors must agree upon a verdict. When you have so agreed, the foreperson will notify the bailiff who will conduct you into court to declare your verdict.

9. Plaintiff's Closing Argument
10. Defendant's Closing Argument
11. Plaintiff's Rebuttal
12. Jury Deliberations
13. After the jury retires to deliberate, you may wish to take a five minute recess.

Debriefing

After the trial, the Judge should convene the students for debriefing. Any time the jury reaches a verdict, the Judge should suspend the debriefing process and allow the jury to render its verdict. Following the verdict, the Judge should resume the debriefing.

During the debriefing the Judge should acknowledge the contributions of the bailiff and clerk, and later thank the jury for listening. The Judge should then offer constructive comments to the students, explaining the reasons for rulings on objections, discussing the effectiveness of their strategies and commenting on the performance of witnesses. The Judge may describe how this mock trial differs from actual cases.

Verdict

The verdict will be read by the foreperson. The Judge may poll the jury if time allows.

Adjourn

Participant Seating Chart

Plaintiff's Team

Attorney ______________________________

Attorney ______________________________

Attorney ______________________________

Attorney ______________________________

Attorney ______________________________

Jessie Jordan ______________________________

R.M. Smythe ______________________________

Blair Evans ______________________________

Clerk ______________________________

Defendant's Team

Attorney ______________________________

Attorney ______________________________

Attorney ______________________________

Attorney ______________________________

Attorney ______________________________

Terrel Okat ______________________________

Dr. Pat Regal ______________________________

Kit Oliver ______________________________

Bailiff ______________________________

Car on Trial

Lesson 9

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
MUSICAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Objectives
Students will:

- Analyze the strong and weak points of each case presented in the trial.
- Identify the character or characters whose performance made a difference in the case.
- Critique the trial.

Resource
Judge or attorney who judged the trial.

Materials
Questions to Consider overhead transparency master.

Time Required
1 class period (may be combined with Lesson 8.)

Prior to the Lesson
Make overhead transparency.

Procedures
■ **Put the overhead on**. Start with the plaintiff's team and ask only the team members to respond to the questions. Defense team members should listen carefully. Switch to defense team members when the plaintiff is done. These are the teams first formed early in the unit: plaintiff and defense.

■ **Move** to whole group discussion. Encourage observations, feelings and questions. An attorney or judge is especially effective in debriefing a mock trial by comparing what went on to what usually occurs in real courts.

■ **In class**, or as homework, have the students write a brief essay, poem, song, or visual piece telling how the trial affected them as citizens. How can they use what they learned?

Extensions

Have students write a public policy statement about the car for the Year 2010. Encourage them to use the information they've learned over the past few lessons in their piece. This should be visionary but based in fact and true to the history of the automobile.

Service learning extension: After students have considered how the trial has affected them as citizens, encourage those students who are motivated to decrease the use of the automobile to consider projects that could reduce automobile dependence in your area. Examples might be running errands for their parents or neighbors on their bicycles; researching alternative modes of transport and educating younger students or older friends, family and neighbors about these alternatives.

Questions to Consider in Debriefing

- What were the strong points in our presentation?
- What were our weak points?
- How could they have been avoided?
- Were our attorneys prepared correctly?
- Did we make good objections?
- Were the witnesses convincing?
- How did the jury view the evidence? What was persuasive? What was not?
- Was the trial conducted in a fair manner?
- Did we achieve our goal? Why or why not?
- Even if we achieved our goal, could we have accomplished it in a different manner?

Freedom of Speech

Introduction

Description
This unit explores the nature of free speech in American society. Students examine the conceptual underpinnings of this right. Students have opportunities to express their viewpoints on difficult applications of free speech, including hate speech. Students examine incidents of hate speech at a hypothetical school, survey the climate of their own school regarding hate speech, and identify options to address hate speech in their own community. For more advanced students, the unit includes a case study of a recent U.S. Supreme Court decision regarding hate speech.

Use of Outside Resource Persons
ACLU speakers may explain their views on the first amendment. A debate between a prosecutor and an ACLU lawyer would be excellent.

Former members of hate groups may speak on their experiences.

If your students do the survey activity in Lesson 5, you may want to start making arrangements for an expert to help design the survey. Two resource books on survey research are listed in the bibliography.

Materials
Start collecting editorial cartoons about free speech for the extension activity after Lesson 2.

Time Required
5 to 8 class periods.

Social Studies Outcomes
Students will:

- Identify freedom of speech protected by the U.S. Constitution.
- Define what is included in "freedom of speech."
- Describe the limits on free speech.
- List the values promoted by protecting free speech in society.
- Describe the different application of free speech rights to students in schools and to citizens in general society.
- Identify selected current conflicts regarding free speech.
- Identify the high level of discomfort that sometimes accompanies protecting free speech.
- Build an awareness about toleration of unpopular viewpoints.
- Identify the effects of hate speech on a variety of individuals and groups.
- List possible actions to take when hate speech occurs in public schools.
- Analyze an appellate decision, identify and prioritize arguments.

- Consider the implications of a U.S. Supreme Court opinion.

Reading and Language Arts Outcomes
Students will:

- Read and analyze written material regarding free speech.
- Write summaries of prior knowledge, new knowledge and feelings or reactions to that knowledge.
- Write clear statements regarding facts and opinions about hate speech in the school.

Higher Order Thinking Skills Outcomes
Students will:

- Create a survey of the school climate.
- Analyze the results of the survey.
- Draw conclusions based on the collected data.
- Create a school-wide policy or program regarding hate speech.

Bibliography

Books

Alderman, Ellen & Caroline Kennedy. *The Bill of Rights in Action.* William Morrow and Co. 1991.

Avi. *Nothing But the Truth.* New York: Orchard Books. 1991. Boy gets into trouble for humming the Star Spangled Banner in a high school.

Bennett, Jay. *Skinhead.* New York: Fawcett Juniper. 1991. A mysterious call summons Jonathon to Seattle—and pits him against a murderous group of Nazi skinheads.

Bunker, Barbara, Howard Pearlson & Justin Schultz. *A Student's Guide to Conducting Social Science Research.* Human Sciences Press. 1975.

Cohen, Miriam. *Laura Leonora's First Amendment.* Dutton/Lodestar. 1990. Laura courageously defies her parents to associate with a student who has AIDS after a controversial court ruling mandates he be admitted to her junior high.

Danziger, Paula. *Can You Sue Your Parents for Malpractice?* Delacourte. 1979. Laura Allen and her classmates create a classroom law-related newspaper after taking a course in "Law for Children and Young People." She and her classmates learn just what rights they do have.

Evans, J. Edward. *Freedom of Speech.* Minneapolis: Lerner Publications Company. 1990. 72 p. Includes bibliographic references. Traces the history of the concept of freedom of speech, discusses how the Supreme Court has interpreted the constitutional amendment, and provides historical and present-day examples of why the issue is controversial.

Facklam, Margery. *The Trouble With Mothers.* New York: Bradbury. 1990. Eighth grader, Luke Troy, does his thing while his mother, the high school history teacher does hers ... that is, until she writes a book called *The Passionate Pirate*, which a band of "Crusaders for a

Clean America" wants to censor. This causes a dilemma for Luke, who must take a stand.

Fink, Arlene & Jacqueline Kosecoff. *How to Conduct Surveys*. Sage Publications. 1985.

Hentoff, Nat. *The Day They Came to Arrest the Book*. Dell. 1983 (hardback and paper). A small group of students and parents decide *The Adventures of Huckleberry Finn* is racist, sexist, and immoral, and demand the book be removed from school reading lists and the library. It doesn't take long for the town to choose up sides, and Barney Roth, editor of the school paper, knows he should print his article on censorship, but he may be too late.

The First Freedom: The Tumultuous History of Free Speech in America. Delacourte. 1988.

Kermit the Frog. *For Every Child, A Better World*. About hate speech.

Langton, Jane. *The Fragile Flag*. Harper/Collins. 1984. (Hardback and paper.) The President is promoting a Peace Missile. George Hill, a nine-year old boy, decides to protest by walking to Washington, D.C., from Walden Pond.

Miles, Betty. *Maudie and Me and the Dirty Book*. Knopf (hardback), Knopf/Bullseye (paper) Avon/Camelot (paper). 1980. Kate innocently reads a book to first graders that describes the birth of a puppy. Suddenly she is in the middle of a censorship battle that involves the whole town.

O'Dell, Scott. *Sarah Bishop*. Scholastic. 1980. (Hardback and paper.) The Revolutionary War changed Sarah's life forever. A fugitive from the British Army, she lives outside the law. This story relates to the right to privacy, trials, and freedom of speech. Both boys and girls enjoy it.

O'Neal, Zibby. *A Long Way to Go*. Viking. 1990. Lila's grandmother strongly advocates women's right to vote. Lila convinces her father to let her march with the suffragettes. Set in 1917, the story highlights the first amendment.

Pfeffer, Susan Beth. *A Matter of Principle*. New York: Dell. 1982. 181 p. Becca Holtz didn't believe that publishing an underground newspaper with some of her friends would cause such a problem, but the principal threatens them with suspension if they don't apologize. They need to make some decisions that are not easy.

Rappoport, Doreen. *Trouble at the Mines*. Harper Collins. 1987. The 1898 coal miners' strike is fictionalized in this account of Mother Jones' supportive march of the workers and their subsequent victory.

Reiss, Johanna. *The Upstairs Room*. Crowell. 1972. Similar to *The Diary of Anne Frank*, this book tells the story of Annie, a young Jewish girl, who flees from Germany to Holland during WWII. Suitable for younger or less able readers.

Sebestyen, Ouida. *On Fire*. Little, Brown/Joy Street Books (hardback), Bantam/Starfire (paper) 1985. Questioning the use of violent tactics to achieve a good cause, this novel explores the complexities of union/management relations at a mine where scabs have been employed to break a strike.

Turner, Ann. *A Hunter Comes Home*. Crown. 1980. This exciting book about a contrast of cultures features Jonas, an Eskimo teenager. As he tries to figure out where he fits in, he becomes frustrated and angry because pleasing others means not being happy within himself. Coming to terms with his own values makes this a remarkable book.

Van Woerkom, Dorothy. *Pearl in the Egg*. T.Y. Crowell. 1980. The author researched this story carefully, basing it on the facts of two real-life female minstrels in King Edward the First's court. This story can be read aloud to primary students to study first amendment issues.

Video/Audiovisual

Hound's Head Productions. "The First Amendment and the Ku Klux Klan." 1989. Twelve-minute video with teacher's guide. Presents both sides of the issue of restricted vs. unrestricted free speech. Available from Social Studies School Service. $60.

Mississippi Educational Television. "You've Got That Right." Miss. ETV, 3825 Ridgwood, Jackson, Mississippi 39211.

Random House Media. "Students' Rights—Focus on the First Amendment." 1988. Video with guide, includes debates on how the right of free speech applies to students.

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
MUSICAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Freedom of Speech

Lesson 1

Objectives

Students will:

- Define the term "speech" as used in the first amendment.
- Give examples of speech.
- Discuss the value of free speech.

Materials

Copies of handout:

- The Value of Free Speech (2 versions)

Time Required

1 to 2 class periods.

Additional Background Information for the Teacher

Free speech rights apply when there is "state action," and not when there is only private action. Anyone acting on behalf of the government qualifies as "state action." Public school administrators, police officers and prosecutors are some examples. This is why students attending private schools do not have free speech rights protected by the U.S. Constitution. However, students in public schools do have these rights.

The following outline of the law will demonstrate how speech is presently protected by the Constitution as interpreted by the courts. The U.S. Supreme Court has given courts a series of rules, called "tests," to use when they are asked to decide whether or not a particular expression of speech should be protected.

In interpreting the first amendment, courts have outlined certain types of speech that may be regulated, or not allowed at all. The Supreme Court has ruled that the first amendment allows the federal and state government to limit and regulate speech by:

1. Putting reasonable **time, place, and manner** restrictions on speech. For example, by restricting large demonstrations near where people live to certain times of the day. This type of limit cannot be related to the content of the speech, only to the time, place, or manner.
2. **Providing extremely little protection** to certain types of speech:
   a. **Obscenity**. The Supreme Court has had a difficult time writing a workable rule to define obscenity. Material is obscene if taken as a whole by an average person applying contemporary community standards it appeals to a prurient (lewd) interest in sex; portrays sexual conduct in a patently offensive way; and lacks serious literary, artistic, political, or scientific value. Access by minors to sexually oriented materials can be

regulated more than it can be for adults.

- b. **Fighting words**. These are expressions that have little social value, are directed as a personal insult in a one-to-one encounter, and are likely to cause an immediate violent reaction.
- c. **Defamation**. This is false written or spoken words that damage a person's reputation.
- d. **Advocacy of illegal action**. This speech urges people to act immediately to break the law and must be likely to produce such illegal behavior.

3. Providing **commercial speech** with more protection than the types of speech described above that get practically no protection and less protection than other forms of speech. All forms of advertising are commercial speech and the states may regulate and sometimes ban it. This is why false advertising can be regulated.
4. Restricting speech because it occurs in certain public places—like outside jails, military bases, and utility substations—that have not traditionally been open to the public.
5. **Public Schools** get special treatment. Speech by students can be prohibited altogether if it materially and substantially interferes with school activities or with the rights of other students or teachers, or if the school administration can demonstrate reasonable cause to believe that the expression would cause material and substantial interference.

Procedures

To set the stage for this lesson, you may wish to find articles or pictures from the newspaper or magazines about freedom of expression, and make a bulletin board or pass them out and have students read.

■ **At the start of class**, ask students to write a 4 to 6 sentence paragraph about what they know about "freedom of speech." Ask for volunteers to read their paragraph and discuss briefly. Then, write on the board:

> "Congress shall make no law ... abridging the freedom of speech...."

Explain that "abridge" means to curtail or reduce.

■ **Tell students** that this comes from the first amendment of the U.S. Constitution.

■ **Ask students** what they think is meant by "speech" in the first amendment. Ask them to give examples, and write on the board as they brainstorm.

Examples of "speech" as interpreted by courts include talking to another person, making a speech to a group, writing a letter to a friend or the editor of the newspaper, etc. Speech also includes electronic transmissions (including computer, video, radio, and television), art, and words to music (records, tapes, compact discs, live performances). Courts have said that for "speech" to be protected under the first amendment, it must *communicate an idea or message*.

Students may mention some types of "speech" that are nonverbal. Nonverbal communication can also be speech when it communicates an idea or message. The first amendment does not only protect "words." Often we communicate with each other through symbols or conduct that represent ideas, persons, objects, etc. Courts call this "symbolic speech."

■ **Check for understanding** by posing the following hypotheticals. Ask whether each example is speech or not:

- Marta writes a letter to her sister in Guatemala, describing life in the U.S. (speech)
- Larry wears all black to school. (not speech, unless this signifies some specific message or idea that people would be likely to understand)
- Mary wears a black armband to school during the Vietnam War. (speech, since the black armband signified opposition to the war)
- Sam wears a jacket with a swastika on the back. (speech, since the swastika is a Nazi symbol and is generally assumed to communicate sympathy with Nazi ideas)

Explain further that the first amendment right to free speech has been interpreted by the courts over the years. The highest court in the United States is the U.S. Supreme Court, located in Washington, D.C.

■ **Pass out the handout** "The Value of Free Speech," which is a description by the Supreme Court of the role of the right to free speech in America society. Ask students to read it. [Note: this Handout is presented in two versions, the first directly from the Supreme Court opinion, and the second a simplified version for younger students.] The Supreme Court wrote this in 1949 in *Terminiello v. Chicago*, 337 U.S. 1 (1949). The Supreme Court still refers to this explanation in current opinions.

■ **Have students** initially work in pairs or small groups to answer the questions that follow the reading. Then discuss as a large group.

■ **Include these points** in classroom discussion:

1. In the opinion of the U.S. Supreme Court, what makes democracy work?

   Free discussion of ideas.

2. According to the Supreme Court, how does free speech make the United States different from totalitarian governments (governments that limit what citizens may do and say)?

   Free speech makes the government responsive to the people.

3. Are there any limits on freedom of speech? If so, what are they?

   Free speech has limits. A "clear and present danger" of harm may justify very limited censorship or punishment for speech. The most common example given is that you do not have the right to cry out "FIRE" in a crowded theater (when there is no fire) because this would cause mass confusion, and someone would very likely be injured in the attempt to escape. Another example would be that a speaker may not advocate immediate violence when it is likely that a listening crowd will act on it. For example, Andy Arsonist could be punished for

yelling to a crowd that is following his every word and appears likely to comply: "Let's go burn down the courthouse!"

4. Do speakers have the right to speak when their speech annoys other people?

   Yes. This gets back to free exchange of ideas, that speech can best be countered by more speech.

5. What does the Supreme Court say is the result of not allowing free discussion?

   The Supreme Court says that standardization of ideas would result. Discuss what that might look like. What if we only allowed one political party to express its views?

6. Have you ever disagreed with someone's use of their right to free speech? Describe your experience.

   Calls for an opinion.

7. What are the benefits of free speech?

   Possible answers include:

   - **To hold government accountable for its actions.**
   - **To get to the truth, individuals must be exposed to a wide variety of ideas.**
   - **To protect and advance minority viewpoints that are necessary for society's pluralism.**
   - **To promote better decision-making by the voters.**
   - **To provide for self-development of the individual, including creative expression.**
   - **To provide release for citizens' negative feelings and reactions so that citizens do not use violence.**
   - **To help promote democracy.**

8. What are the problems with allowing free speech?

   Possible problems include:

   - **Lack of discipline and order.**
   - **Inability to promote decency.**
   - **Inability to prevent violence.**
   - **Inability to control those in the population who are immature and irresponsible.**
   - **Inability to protect individuals who are the objects of hate speech.**
   - **Inability to stop people who anger and offend others.**

9. Should these same values apply to public schools or are public schools so different from general society that these factors should not apply?

   Calls for an opinion.

10. Some criticize Americans saying they have gone too far in permitting freedom of speech. Do you agree? Why or why not?

    Calls for an opinion.

11. What responsibilities do people have regarding freedom of speech?

    Calls for an opinion.

■ **Read (and write on the board)** the following quote from Voltaire: "I may disapprove of what you say, but will defend to the death your right to say it." Ask students what Voltaire meant. Do they agree? Why or why not? Does this correspond with the meaning of our first amendment?

■ **Finally, ask students** to write a two-paragraph reaction to the ideas and information discussed in this lesson. Tell them: Write what you now know about free speech and what you feel about the importance of free speech. How have your ideas changed, if at all?

Extensions

- Ask students to illustrate the idea of free speech in a poster either individually or in a group.
- Ask students to write Poems for Two Voices, using the quote from Voltaire. (The Poems for Two Voices strategy is explained in the Japanese Internment unit, Lesson 1, p. 115, and the Salmon Summit unit, Lesson 5, pp. 301-303.)
- Prepare a short skit for younger students to illustrate what they learned from this lesson.

The Value of Free Speech

The vitality of civil and political institutions in our society depends on free discussion. It is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.

The right to speak freely may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

—U.S. Supreme Court

1. In the opinion of the U.S. Supreme Court, what makes democracy work?

2. How does free speech make the United States different from totalitarian governments (governments that limit what citizens may do and say)?

3. Are there any limits on freedom of speech? If so, what are they?

4. Do people have the right to speak when their speech annoys other people?

5. What does the Supreme Court say is the result of not allowing free discussion?

6. Have you ever disagreed with someone's use of their right to free speech? Describe your experience.

7. What are the benefits of free speech?

8. What are the problems with allowing free speech?

9. Should these same values apply to public schools or are public schools so different from general society that these factors should not apply?

10. Some criticize Americans saying they have gone too far in permitting freedom of speech. Do you agree? Why or why not?

11. What responsibilities do people have regarding freedom of speech?

The Value of Free Speech

Government and politics in America depend on free discussion. Free exchange of ideas allows the people to control their government. It also allows for peaceable change. The right to speak freely is one of the main differences between America and one-party, repressive governments.

Free speech should create a condition of unrest. It should create dissatisfaction with conditions as they are. It should stir people to anger. Speech is often challenging.

Speech may challenge strongly held ideas. It may make people very uncomfortable.

Free speech cannot be censored or punished, with one exception. It can be censored or punished if it is likely to produce a clear and present serious danger. The danger must be more than public inconvenience, annoyance, or unrest.

Without this freedom of speech, the government or community could force people to believe its ideas.

—U.S. Supreme Court

1. In the opinion of the U.S. Supreme Court, what makes democracy work?

2. How does free speech make the United States different from totalitarian governments?

3. Are there any limits on freedom of speech? If so, what are they?

4. Do people have the right to speak when their speech annoys other people?

5. What does the Supreme Court say is the result of not allowing free discussion?

6. Have you ever disagreed with someone's use of their right to free speech? Describe your experience.

7. What are the benefits of free speech?

8. What are the problems with allowing free speech?

9. Should these same values apply to public schools? Are public schools so different from general society that these factors should not apply?

10. Some criticize Americans saying they have gone too far in permitting freedom of speech. Do you agree? Why or why not?

11. What responsibilities do people have regarding freedom of speech?

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Freedom of Speech

Lesson 2

Objectives

Students will:

- Express their opinions about the limitations of free speech.
- Identify situations when speech may be regulated.

Materials

Copies of handout:

- Free Speech Opinion Poll

Time Required

1 class period.

Procedures

■ **Tell students** you want to find out their opinions about freedom of expression and when speech should be regulated or not allowed. Explain the difference between "facts" and "opinions." Pass out the Opinion Poll and ask students to complete it individually. Give them 10 minutes to complete it. Remind them you are not asking for what they think the law is, but what they think is fair.

Once students have completed the Poll, you may either take a hand count and record their opinions on the board using a graph, or ask groups of students to line up under signs that say "Agree," "Disagree," and "Undecided." Encourage students to give reasons for their opinions and ask those who are undecided to explain why.

Be sure not to characterize those students' opinions that are not in accord with the state of the law as "wrong," as this is an opinion poll, not a test. But do use the examples as opportunities to teach when courts have decided speech may be regulated or limited.

Information for Opinion Poll:

1. Jack is a practical joker. He shouts "Fire!" during a school assembly, causing panic among the students as they try to leave the auditorium. He should be punished for this action.

   Jack's action is the classic example given for speech that *can* be regulated, since it has the potential for causing harm to others, as people panic trying to leave the auditorium. The school can punish Jack for this speech.

2. Schools should be able to prohibit students from wearing "gang" clothing, such as gang-related hats or coats.

   Students should be aware from Lesson 1 that certain clothing can be speech, if it is conveying a message. Gang clothing and symbols *may* be conveying a message. This is a controversial subject that courts have not ruled on. In Califor-

nia the state legislature passed a law allowing schools to ban gang clothing. The ACLU argues that this is censorship and violates the first amendment. School administrations argue that regulation of gang clothing is necessary to maintain a safe atmosphere within the school.

3. Police ask Rafael and Carlos to leave the Great America Shopping Mall because their dark jackets and baggy pants fit the description of a "gang profile." The police should be able to ask Rafael and Carlos to leave.

   "Gang profiles" are one way of identifying gang members, based on the way they dress and behave. This scenario is based on a real case in northern California in which minority youths were asked to leave a shopping mall based on their dress, which included baggy pants and black jackets. The policy was challenged and the mall terminated the policy of excluding persons based on their dress.

4. The Neo Nazi Youth Group plans a parade through the streets of Skokie, Illinois, so that they can advocate the extermination of Jewish people. Most of the people of Skokie are Jewish men and women who were imprisoned in concentration camps in Germany during World War II by the Nazi government. The Youth Group should be allowed to march.

   This is based on a real case, and the group was allowed to march. The message is a political one, and government may not regulate speech based on its content. The government may, however, limit the time, place, and manner of the speech. If the Nazi group advocated the immediate harm to Jews and people were responding in a way to harm them, then this would not be protected speech—it would be incitement to unlawful activity.

5. At 6 a.m. before people go to work, Van Thu drives a truck with a loudspeaker in an area where people live, telling how poorly refugees are treated in this country. He should be allowed to do this.

   This speech is protected, but the government may regulate the time, place, and manner of speech. Van Thu has the right to tell his opinion on refugees, but his speech may be limited to downtown areas or to residential areas at a later time. The loudness of his speaker system may also be regulated.

6. The Animal Liberation Front, an animal rights group, is opposed to the use of animals in scientific research. They protest outside the University Research Facility, yelling at workers as they enter the building and passing out leaflets to bystanders. This protest should be allowed.

   This speech is protected, as long as the protesters do not seriously interfere with the operation of the facility.

7. Fat Be Gone Company advertises that its nutrition system will result in a

weight loss of 5 pounds per week and that none of this weight will be gained back. In reality, persons on this weight loss program lose from 1 to 2 pounds per week and most regain that weight. The advertising should be allowed.

States may ban false advertising as part of commercial speech.

8. Public high school students write an underground newspaper on their own time, with their own resources and distribute the paper at a class picnic. The newspaper has the results of an opinion poll about each teacher. Some of the articles are very critical of the teachers. The school should punish the students for publishing and distributing the paper.

   This speech by students is protected. Newspapers produced away from school with students' resources and on student time are given protection of the first amendment. (However, if any of the articles contained false information that damaged a teacher's reputation, the speech is unprotected defamation.)

   Student newspapers that are sponsored by the school and written with school resources and support may generally be controlled by the school administration.

9. Mary Beth and John Tinker each wear an armband to high school showing their disagreement with the American War in Vietnam. They should be punished.

   Mary Beth and John have the right to state their opinion, even if it is unsettling to others. Wearing an armband is symbolic speech. This will be permitted unless it causes a substantial disruption of the educational process. For example, the students could be banned from wearing the armbands if fights broke out in the hall, or class after class could not go forward because of students' disagreement over the armbands' message.

■ **Summarize the information** from the discussion about the opinion poll by drawing the following continuum on the board.

The types of speech and their level of protection could be placed on a continuum:

No or little protection	**Highly protected**
Obscenity	Political speech
False advertising	
Defamation	
Advocacy of illegal action	
Fighting words	

Extensions

- Ask students to look in newspapers and magazines for articles or editorial cartoons about free speech. Share any cartoons you have collected. Discuss the articles or cartoons as a group. Ask students to draw their own editorial cartoons.

- List several controversial free speech topics, either from the opinion poll or from newspaper articles or cartoons. Assign 3 or 4 students to each topic, and ask them to research the topic, then have a discussion about the topic while the rest of the class listens.

Free Speech Opinion Poll

Read the following statements and decide whether you agree (A), disagree (D) or are undecided (U).

____ 1. Jack is a practical joker. He shouts "Fire!" during a school assembly, causing panic among the students as they try to leave the auditorium. He should be punished for this action.

____ 2. Schools should be able to prohibit students from wearing "gang" clothing, such as gang-related hats or coats.

____ 3. Police ask Rafael and Carlos to leave the Great America Shopping Mall because their dark jackets and baggy pants fit the description of a "gang profile." The police should be able to ask Rafael and Carlos to leave.

____ 4. The Neo Nazi Youth Group plans a parade through the streets of Skokie, Illinois, so that they can advocate the extermination of Jewish people. Most of the people of Skokie are Jewish men and women who were imprisoned in concentration camps in Germany during World War II by the Nazi government. The Youth Group should be allowed to march.

____ 5. At 6 a.m. before people go to work, Van Thu drives a truck with a loudspeaker in an area where people live, telling how poorly refugees are treated in this country. He should be allowed to do this.

____ 6. The Animal Liberation Front, an animal rights group, is opposed to the use of animals in scientific research. They protest outside the University Research Facility, yelling at workers as they enter the building, and passing out leaflets to bystanders. This protest should be allowed.

____ 7. Fat Be Gone Company advertises that its nutrition system will result in a weight loss of 5 pounds per week and that none of this weight will be gained back. In reality, persons on this weight loss program lose from 1 to 2 pounds per week and most regain that weight. The advertising should be allowed.

____ 8. Public high school students write an underground newspaper on their own time, with their own resources and distribute the paper at a class picnic. The newspaper has the results of an opinion poll about each teacher. Some of the articles are very critical of the teachers. The school should punish the students for publishing and distributing the paper.

____ 9. Mary Beth and John Tinker each wear an armband to high school showing their disagreement with the American War in Vietnam. They should be punished.

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Freedom of Speech

Lesson 3

Depending on the age and maturity of your students, you may wish to skip this lesson, and continue with Lesson 4.

Objectives

Students will:

- Examine a current decision of the U.S. Supreme Court regarding hate speech.
- Analyze a court opinion to identify arguments, and prioritize those arguments.
- Articulate arguments from an appellate opinion.
- Discuss implications of a Supreme Court opinion.

Materials

Copies of handout:

- *Wisconsin v. Mitchell*, Unmarked Opinion Case Study

Time Required

1 class period.

Procedures

■ **Ask a student** to read aloud the facts of the case study, *Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993). [This case was decided by the U.S. Supreme Court in June 1993.] Review the facts with the class, listing important facts on the board as students point them out. Explain that the case is on appeal. This means a higher court will review the decision of the lower court. The case was originally heard by a Wisconsin trial court. The sentence was then appealed to the Wisconsin Supreme Court. Then the decision of the Wisconsin Supreme Court was appealed to the U.S. Supreme Court.

■ **Ask students**: What is the issue the U.S. Supreme Court must decide? (Whether Todd Mitchell's first amendment rights were violated by the law that doubled his sentence because of the racial motivation for his crime. In other words, is the law constitutional?)

■ **Then ask students** to read the two opinions and decide which they agree with. After students have read them, take a hand count of how many agree with Opinion One, how many agree with Opinion Two. Then put students into groups of four to five students, with half assigned to Opinion One and half assigned to Opinion Two. (You may either assign students to work with the opinion they agree with, or the opposite.)

■ **Tell students** to work for 10 to 15 minutes to list the arguments in their opinion. Tell them they may also add other arguments they think of to support their side. Then have students prioritize the arguments from most persuasive to least persuasive. Tell each group to appoint a reporter and a recorder.

- **Then allow students** to debate whether the law is constitutional or not. Take one argument from a group that supports Opinion One, then take an argument from a group that supports Opinion Two. Continue taking all the arguments until they are completely finished. Make sure that the first groups do not give all the arguments, and that every group gets to participate. Record arguments on the board, with a summary word for each argument.

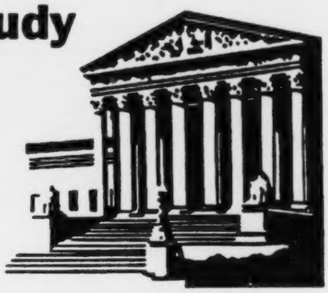
- **After discussing the case,** inform students that Opinion One is the opinion of the Wisconsin Supreme Court, which was reversed by the U.S. Supreme Court. Opinion Two is the opinion of the U.S. Supreme Court (with some additions from the dissent at the lower court). Therefore the law was held to be constitutional, and Mitchell must serve the longer sentence.

- **Ask students** whether they think this decision will have an effect on hate speech. Why or why not?

Extension

Ask students to write an essay or a letter to the editor, to a local politician or school board member describing what they learned as a result of this lesson.

Wisconsin v. Mitchell
An Unmarked Opinion Case Study



Facts of the Case

It is 1989. A group of black teenagers in Kenosha, Wisconsin are discussing a scene from the movie "Mississippi Burning" in which a Ku Klux Klansman beat a young black boy who was praying. Todd Mitchell, 19 years old, one of the older members of the group, asked his friends: "Do you all feel hyped up to move on some white people? ... There goes a white boy; go get him."

As Mitchell stood and watched, ten of his friends ran across the street, knocked down, beat up, and robbed Gregory Riddick, a 14-year-old white boy. Gregory was severely injured and was in a coma for four days.

Mitchell was tried and found guilty of aggravated battery. (Battery means to hit another person with intent to harm them.) The jury found that Mitchell intentionally selected his victim because of his race. The maximum sentence for aggravated battery was two years. A Wisconsin "hate crime" law allowed judges to increase the penalty for crimes motivated by race, religion, color, sexual orientation, or national origin. Because the jury found the crime was motivated by race, the judge then sentenced Mitchell to four years, twice the usual maximum sentence.

Mitchell has appealed his sentence, and claims that the hate crime law is unconstitutional, because it violates his right of free speech.

Opinion One

The first amendment states "Congress shall make no law ... abridging the freedom of speech." The first amendment protects not only speech but thought as well. At the heart of the first amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the state. Even more fundamentally, the constitution protects all speech and thought, regardless of how offensive it may be.

If there is a bedrock principle underlying the first amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. The constitution calls for free thought—that does not mean free thought only for those who agree with us, but also freedom for the thought we hate.

Without doubt the hate crimes statute punished bigoted thought. We rule that the "hate crimes" law is unconstitutional because it restricts free speech and violates the first amendment. We also note that the first amendment does not protect Mr. Mitchell from prosecution for his actions, only the additional punishment for the "thought" associated with his actions. Mr. Mitchell should be required to serve only the two year maximum sentence for aggravated battery.

Opinion Two

In enacting the "hate crimes" law, the state of Wisconsin sought to remedy the great harm to individuals and society caused by hate crimes. The Legislature thought that hate crimes are more likely to provoke violence, community unrest and emotional harm to victims than other crimes.

The law allows judges to increase punishment for a crime when racial bias inspires the crime. The law is directed at conduct unprotected by the first amendment, not speech. To be sure, conduct can be speech when the person engaging in the conduct intends to express an idea. This does not mean, however, that a physical assault is expressive conduct protected by the first amendment. The first amendment does not protect violence.

The Wisconsin law is constitutional. It does not punish bigoted thought. It does punish acting on those thoughts. The first amendment protects the right to be a racist, to have bigoted thoughts and to express them, but it does not allow a person to act on them. Todd Mitchell's first amendment rights were not violated. He must serve the four year sentence.

LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Freedom of Speech

Lesson 4

Objectives
Students will:

- Examine incidents of hate speech at a hypothetical school.
- List how the incidents affect different groups within and around the school.
- Brainstorm solutions to the problem.

Materials
Copies of handouts:

- Problems at Fillmore Elementary School
- Problems at Fillmore Middle School

Time Required
1 to 2 class periods.

Procedures
■ **Inform students** that they are now going to examine "hate speech" by exploring some recent problems at Fillmore Elementary/Middle School. (Two sets of handouts are given, depending on whether you are in an elementary or middle school.)

■ **Pass out the handout** and have students read through the facts. Tell students that Fillmore Elementary/Middle School is not a real school, but the events described reflect actual incidents that have occurred in schools in Washington State.

■ **Have students work** in pairs to answer the questions in the Handout. Alternatively, divide students into small groups, and have them brainstorm the effects on just one group, for example "students," or "teachers." Or, assign 2 or 3 incidents to each group, and have them discuss the effect of that incident on all groups.

■ **Have students report** back from their small groups for a large class discussion of the issues.

Discussion Points for Handout

Note: Examples of possible effects are listed for each group. However, the effects listed are not intended to be comprehensive.

1. Discuss what effect the problems of Fillmore Elementary/Middle School have on:

    - **Students**—Hateful speech seriously injures students who are the direct targets and also those who are members of the group vilified. Students may feel less safe in school, this may interfere with studying and the students' success in school. It may have lifetime effects on students' self-esteem and life goals.

- **Teachers**—Teachers may be demoralized to be teaching in such a school, their effectiveness as teachers may diminish.
- **Administration**—Administration will be faced with more disciplinary problems, a host of angry and frightened parents, and bad press. They may lose their jobs if unable to turn things around.
- **Parents**—Parents may withdraw their children from school; they may sue the school for failure to provide a safe environment. Other parents may defend their children's acts of bigotry and fight the school.
- **The Community**—The community may very well be embarrassed to be known as a place of intolerance. It may galvanize the community to become involved.
- **The School**—School spirit will be demoralized which affects sports, extracurricular activities and motivation of students to achieve.
- **Other Groups and Individuals**—Criminal prosecutions for assault may add to the crowded court docket, civic leaders may be embarrassed, other hate groups may be encouraged to recruit students from this school.

2. What is going on at Fillmore Elementary/Middle School?

   Fillmore Elementary/Middle School reflects the larger community where racial, ethnic and sexual tensions and crimes are increasing.

3. Why do you think this happens?

   (Students will give their opinions.)

4. Brainstorm solutions to the problems at Fillmore Elementary/Middle School.

   In Washington, schools have undertaken these types of activities:

   - Administration has held Pride Week to focus on activities of various groups to encourage unity and respect.
   - Administration has sent out a series of postcards to parents listing student accomplishments and asked parents to comment on positive things at school on a postcard. The returned postcards are displayed at school.
   - Teachers have taught a variety of multi-racial curricula.
   - Multi-racial teams of students have been organized to advise faculty, student government and administration on easing racial tensions.
   - Minority students have been given a leadership role in encouraging their peers to join the drill team and other activities in which few students of color now participate. New student advisory team members have volunteered to speak to 8th graders at a high school orientation program.
   - Minority students have discussed racial harassment in a video tape to be shown to teachers and other staff members. Students have created posters promoting racial harmony.
   - The end-of-year "Big Event" has been changed to a multi-cultural affair.

- Student government has been restructured to promote greater minority involvement and encouraged to deal with more substantive issues.
- A faculty team has been established to examine ways to broaden curriculum to include accomplishments of minority group members and cultures.
- Schools have increased minority faculty members.
- Administration has disciplined students who have made threats to other students and who have called other students by racial slurs.
- Administration has referred for criminal prosecution students who have threatened others.

***When Hate Groups Come to Town, A Handbook of Model Community Responses*, published by the Center for Democratic Renewal, describes these approaches when hate groups come to schools:**

- One state department of education (Maryland) has developed an emergency response guide for educators to cope with outbreaks of racist or religious violence, including KKK activity. The pamphlet offers ideas on how to demonstrate the school's concern over such incidents, from talking about the meaning and motivation behind the act, to discussing ethnic diversity. It suggests ways that teachers can relate the incident to her or his discipline, e.g., the social studies teacher can teach the historical context of racism or ethnic groups or English teachers can point out examples of stereotyping and racism in our language.
- Additionally, there should be long-range programs to address equity issues.
- One state board of education adopted a strongly worded resolution reflecting its view of the role of educators in creating a climate to discourage racial, ethnic and religious bigotry. A broad base of PTAs, educators, guidance counselors, administrators, students themselves and others organized a statewide meeting to develop a coordinated strategy for a campaign against bigotry and hate/violence.
- Development of official and "informal" student leaders is being done in one state. See the Handbook for additional ideas.

5. What role should a student's right to free speech play here?

   In the case of *Bethel School District v. Fraser*, 478 U.S. 675 (1986)—which took place in Washington State—the U.S. Supreme Court said that public school students have free speech rights in school. But it also ruled that a high school student could be punished for his sexually suggestive speech at the school assembly. It ruled that school officials have the authority to determine what kind of speech disrupts the educational process or "invades the rights of others," in a school-sponsored activity that students are attending as a part of their commitment to the regular school day. Chief Justice Burger, writing for the majority, suggested that school officials must uphold the "educational mission;" they must teach "fundamental values." In this decision, the Court affirmed that the first amendment free speech rights of students are limited in public school settings and certainly are not the same as the rights of adults in other settings.

Therefore, administrators constitutionally have the right to punish students for speech that disrupts the educational process or invades the rights of others during school sponsored activities that are part of the regular school day. It is important, however, that the administrator's decision be based on a strong showing that the speech interferes with educational effectiveness. The ages and ethnic make-up of the children at school, pre-existing racial tensions, and the potential for violent confrontation are factors that must be considered.

■ **Students should be informed** that many of the free speech activities identified in Fillmore Elementary/Middle School are protected speech in the general society.

A major debate is presently occurring about the role of hate speech in universities. Many student speech codes have been struck down by courts as violating students' free speech rights.

Problems at Fillmore Middle School

During the last year at Fillmore Middle School, the following incidents occurred:

- A student in the school intentionally knocked into an African American student and told him, "You're dead, nigger—I'm going to kill you."
- Graffiti using racial slurs has been spray-painted on the school.
- Two exchange students from Iran have been shunned by the student body.
- A male teacher tells a group of male students before a basketball game a joke about women really wanting to be raped.
- An male exchange student from France has been pursued by the female students.
- A female teacher tells a joke that makes people from Poland appear stupid.
- A student in speech class presents his assigned humorous speech by pretending to have a stutter.
- Some students have pointed their fingers like guns at Native American Indian students and said, "Just call me cowboy."
- A flyer inviting students to call a toll-free number for information about joining the Ku Klux Klan was circulated at school.
- A counselor told an African American student that the reason beepers were not allowed in school was because blacks use them to conduct drug deals.
- A group of African American males who did not attend the school beat up a white student from the school and called him a "honky."

Directions

1. Discuss what effects the problems at Fillmore Middle School have on:

   Students

Teachers

Administration

Parents

The Community

The School

Other Groups and Individuals

2. What is going on at Fillmore Middle School?

3. Why do you think this happens?

4. Brainstorm solutions to the problems at Fillmore Middle School.

5. What role should a student's right to free speech play here?

Problems at Fillmore Elementary School

During the last year at Fillmore Elementary School, the following incidents occurred:

- Students made prank phone calls on the weekends to local businesses owned by ethnic minorities.
- Students played a game at recess called "Smear the Queer."
- Students wrote racist words on the bathroom stalls about other students.
- Students wrote threatening notes and left them anonymously in other students' desks.
- One student refused to be partners with another student, saying "She can't even speak English."
- Students called each other names on the playground while playing kickball.

Directions

1. Discuss what effects the problems at Fillmore Elementary School have on:

Students

Teachers

Administration

Parents

The Community

The School

Other Groups and Individuals

2. What is going on at Fillmore Elementary School?

3. Why do you think this happens?

4. Brainstorm solutions to the problems at Fillmore Elementary School.

5. What role should a student's right to free speech play here?

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Freedom of Speech

Lesson 5

Objectives

- Students will work cooperatively to create a survey about the "climate" of their school regarding hate speech.
- Students will compile and analyze data.
- Students will interpret the data.
- Students will identify options to address the issues regarding hate speech in their school or community.

Materials

See resource books on survey research in bibliography at the beginning of this unit.

Time Required

1 to 2 class periods.

Procedures

■ **Ask students** to look back at the groups affected by hate speech: 1) students, 2) parents, 3) teachers, 4) administrators, 5) the community, and 6) the school itself. Divide students into 6 groups and ask them to brainstorm questions that could be asked of each of these groups to find out how students, staff, etc. perceive the climate at your school. Determine how many questions you will use per category. You might want to invite a statistician, pollster, mathematician, or actuary to advise students on how to construct an accurate survey instrument.

For example:

> Students at Fillmore Elementary school call each other inappropriate names:
>
> never ——— sometimes ——— usually
>
> Students feel honored and respected at this school.
>
> never ——— sometimes ——— usually

■ **Print the survey** and discuss who your target group will be. Will it be all students at your school, a certain grade level, or a random selection? Send students out to collect data.

■ **Compile and analyze** data. Use mean, median, mode plus other indicators.

■ **Discuss possible** interpretations of data. Evaluate the survey.

■ **Publish the data** with students' written interpretation and rationale for conclusions drawn.

■ **Based on the data**, determine next steps: e.g., a "Human Dignity Policy" for your school, "Affirmation Posters" of appropriate ways to treat others within the school and community, or publishing in the school newspaper interviews with students to celebrate/recognize diversity within the school community.

Extension

Ask sutdents to make a colored graph or other visually exciting display of the survey results to display with their posters about appropriate ways to treat others at school.

Introduction

Description
This unit introduces students to the fourth amendment and the law of search and seizure. Students learn what a "search" is, what a "seizure" is, the tension between the right of privacy and public safety, and how courts interpret the fourth amendment to analyze the legality of searches and seizures. Students also examine Washington's school locker search law, and conduct a scripted mock trial about a school search. The unit includes two case studies applying search and seizure law, and concludes with a modified "Jeopardy" game to evaluate learning.

Use of Outside Resource Persons
An attorney or judge would be very helpful in explaining the law in the first two lessons. A police officer would be helpful with Lesson 5.

Time Required
6 to 9 class periods.

Social Studies Outcomes
Students will:

- List the U.S. Constitution as the source for law regarding search and seizure.
- Identify the competing values of police powers to enforce the law versus privacy interests of individuals underlying search and seizure law.
- Identify legal requirements of searches with and without a warrant.
- Define the exclusionary rule.
- Recognize their own views on the balance between privacy and efficient police work.
- Analyze the school search law.
- Hear factual evidence and apply law to facts.

Reading and Language Arts Outcomes
Students will:

- Analyze written information.
- Define "search."
- Define "seizure."
- Discuss court interpretations of the fourth amendment.
- Examine language for precise meanings as used by a court.
- Read and interpret facts from various points of view.
- Critically examine written case studies.
- Write persuasively using facts to express an opinion.
- Demonstrate listening and speaking skills.

Higher Order Thinking Skills Outcomes

Students will:

- Analyze facts of a case.
- Argue from more than one side of a case.
- Identify and weigh importance of facts.
- Evaluate decisions on a continuum.
- Discern levels of privacy and give reasons.
- Synthesize facts to present a point of view.
- Develop and support opinions verbally and in writing.
- Contrast legal vs. illegal search and seizure practices based on law.

Bibliography

Books

Almonte, Paul & Theresa Desmond. *The Facts About Police, People, and Power.* New York: Crestwood House. 1992. 48 p. Examines the problems that can occur in determining a balance between the actions of police in apprehending criminals and the rights of individual citizens.

Conford, Ellen. *We Interrupt This Semester For an Important Bulletin.* Little, Brown. 1979. Carrie and Chip want the school newspaper to have some zip this year so they decide to do some investigative reporting. They learn the hard way about invasion of privacy and hasty conclusions.

Brancato, Robin. *Sweet Bells Jangled Out of Tune.* Scholastic/Point (paper). 1983. For older readers, this book is about the right to privacy when a young girl wants to help an aging grandmother who doesn't want either her help or her attention.

Fitzhugh, Louise. *Harriet the Spy.* Harper & Row. 1964. Harriet fills a secret notebook with incidents and conversations of friends and family, unbeknownst to them. When the contents of the notebook are revealed, Harriet must face their anger.

Gauch, Patricia. *This Time, Tempe Wick?* Putnam. 1974. Set in 1780, Revolutionary soldiers camp on Tempe's family farm in New Jersey. She befriends them until they steal her horse. They'd better watch out!

Video/Audiovisual

Mississippi Educational Television. "You've Got That Right." Mississippi ETV, 3825 Ridgwood, Jackson, MS 39211.

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Search and Seizure

Lesson 1

Objectives
Students will:

- Define "search" and "seizure."
- Evaluate the competing interests of privacy and law enforcement.
- Sketch either a search or seizure or the competing interests involved in search and seizure law.

Materials
Drawing supplies.

Time Required
1 class period.

Outside Resource Person
An attorney would be very helpful in explaining the law of search and seizure and in debriefing students' drawings at the end of the lesson.

Procedures
■ **Enter class and request** that a particular student (with whom you have discussed this before class) hand you his or her bookbag, wallet, or purse and bring it up to the front of the class. Indicate to the entire class that you are going to demonstrate something by inventorying the entire contents of the bookbag, wallet, or purse in front of the class. (Alternatively, students could be ordered to remove their shoes and place them in the front of the room.)

The student should react negatively to the idea but submit to compulsion. Before the item is inventoried (or the shoes are removed), stop and ask the students what they are feeling. The anger, resentment, etc. that some of them may be feeling is probably due to a perceived invasion of privacy. The fact that some students did not react negatively shows the subjective nature of privacy. Explain that today's lesson is about privacy and the ability of the government to interfere with an individual's privacy.

■ **Write "search and seizure"** on the board. Draw a scale with privacy on one side and government enforcement of laws on the other. Tell students that the subject of search and seizure requires a balancing between the two. Discuss. Points to discuss would include that the balance is between the rights of an individual (privacy) and the rights of "society" (the government's need to enforce the laws). For example, if the police (government) suspect that someone in your neighborhood is selling drugs, would it be fair to send a police dog or police officers to search through every house? This might be an effective way for the police to find the drug seller, but it would invade the privacy of many individuals who have not committed a crime. In this example, the scale would weigh in more heavily on the side of the need to protect privacy, since the police could use other, less intrusive methods to find those actually selling drugs.

■ **Ask students** what a "search" is. Define it as a prying into hidden places for something that is concealed and does not include observing that which is open to view. Check for understanding by presenting these hypotheticals:

- Is it a search when a police officer walking by on the sidewalk notices marijuana growing in Tom's front yard? (No, since it was open to view.)
- Is it a search when a police officer listens to Mary's conversations by using a hidden electronic device? (Yes, since the officer is prying into a hidden place.)

■ **Ask students** what a "seizure" is. There are two types of seizures:

1. A seizure of *property* occurs when the police actually take the property or interfere with the use of it in some important way.
2. A seizure of the *person* occurs when law enforcement officers give "a show of official authority such that a reasonable person would have believed s/he was not free to leave."

Check for understanding by presenting these hypotheticals:

- A police officer cuts down what she suspects is a marijuana plant growing in Tom's front yard to take it to the lab for testing. Is this a seizure? (Yes. Even though it was not a search since the plant was open to view, it is a seizure since the officer has no legal right to be in Tom's yard, and is taking Tom's property into her possession.)
- Jane is arrested and taken to jail. (Yes, this is a seizure of her person.)
- An officer requests identification from someone on the street. (No, not a seizure without more.)

■ **To further check** for understanding, ask students to quickly sketch a picture of either a search or seizure, or the competing interests involved in search and seizure law (privacy vs. law enforcement). Then have students share and explain their work in groups. If you have an attorney present, he or she can help debrief students' work, and check their understanding of the concepts.

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Search and Seizure

Lesson 2

Objectives
Students will:

- Examine their opinions about privacy.
- Analyze the fourth amendment of the U.S. Constitution.
- Complete a worksheet, and apply the information to hypothetical examples.
- Define "warrant."
- Evaluate searches to determine whether they violate the fourth amendment.
- Create a graphic representation of "probable cause."

Materials
Copies of handouts:

- Fourth Amendment of U.S. Constitution
- Search and Seizure Worksheets
- Privacy Opinion Poll
- Search and Seizure Cases
- Exceptions to Search Warrant

Time Required
1 to 2 class periods.

Procedures

■ **Pass out a copy** of the handout of the U.S. Constitution. Explain that search and seizure law is governed by the fourth amendment of the U.S. Constitution. Have students in pairs underline the important words in the fourth amendment. Tell students we will first focus on the words "unreasonable searches and seizures." Warrants will be discussed later, at the end of this lesson.

■ **Put the following sentence** on the board or overhead and explain that through court interpretations the fourth amendment bans:

- Unreasonable searches and seizures
- By the government
- Of areas that fall within a legitimate
- Expectation of privacy.

■ **Tell students** that answering a series of questions, or a framework of analysis, will help them better understand the requirements of the fourth amendment. Pass out Worksheet Part 1, and ask students to fill in the blanks as you explain the following information. (There are three parts to the worksheet. Younger students may only complete parts 1 and 3, more advanced classes should complete all.)

Framework for analysis of the fourth amendment:

1. Was there a search or seizure? Remind

students of the examples given in lesson 1—did the police pry into a hidden place or interfere with someone's possession of property or "seize the person?"

2. Was the search or seizure conducted by the government? For the fourth amendment to apply the search must be conducted by the **government** and this includes anyone who is an **agent** of the government. An agent could be someone that the government asked to act on its behalf. For example, if a police officer asks Sara to search her neighbor's house for drugs, Sara is an agent of the government.
3. Was the search or seizure unreasonable? Whether or not a search is unreasonable depends upon the **facts of each case**. As a general rule, searches with warrants are reasonable and searches without warrants are **unreasonable** unless they fall within one of the stated exceptions to the warrant requirement. (A list of exceptions to the warrant requirement is included at the end of this lesson.) Warrants will be issued if there is "probable cause," discussed below.
4. Was there an expectation of privacy? **Expectation of privacy** means what individuals consider private. These expectations vary from person to person. One individual may feel comfortable having someone else look through their wallet while another may not want anyone looking inside. Remind students of the "search" you did in the last lesson.
5. Was the expectation of privacy legitimate? Legitimate means **what society is willing to protect**.

The following exercise should help students with these concepts.

■ **Pass out** the Privacy Opinion Poll. Tell students to complete it according to their personal opinion about what should be private, not what they think the law is.

Give students time to complete the poll, then get a hand count for each situation. Allow students to explain why they answered as they did. After each question has been discussed, tell students how courts have interpreted the privacy rights in that situation:

1. Your garbage placed on the street in a garbage can to be picked by the city.

   The U.S. Supreme Court has ruled that you do not have a legitimate expectation in garbage placed on the street. The Washington Supreme Court, however, has ruled that, under the Washington Constitution, you do have a legitimate expectation of privacy. Explain that if the state constitution gives more rights than the federal constitution, state rights will prevail.

2. Your carry-on bag at the airport.

   Airports and borders are considered exceptions in the privacy area. The overriding interest in security at airports is sufficient to allow airport security to search bags for weapons, and to search passengers with metal detectors.

3. Your school locker.

   Washington has a School Locker Search statute that specifically says

that students in public schools do not have a legitimate expectation of privacy in their school lockers.

4. The numbers you have called from your home telephone.

   Under the federal constitution, the police can find out the numbers you have dialed without a search warrant, but under the Washington Constitution, you have a legitimate expectation of privacy in that information, and police would have to get a warrant to find out that information.

5. Conversations made on a cordless or cellular phone.

   While the U.S. Supreme Court has not ruled on this issue, lower courts have ruled that a person does not have a legitimate expectation of privacy in these conversations because it is common knowledge that they can be intercepted.

6. What you are doing in your fenced-in back yard.

   What you do in your fenced yard is private. However, courts have ruled that surveillance from the air is not considered to be a search. Therefore you do not have a legitimate expectation of privacy in your back yard from air surveillance.

■ **For more advanced classes**, do part 2 of the Worksheet, as you explain the following:

Legitimate means **what society is willing to protect**. As we saw in the Opinion Poll, a person may feel that the trash they set out on the street is private, but, according to the U.S. Supreme Court, society is not willing to protect that expectation. Even though the trash may have bills, medical papers, personal letters, the U.S. Supreme Court has said that the expectation of privacy in the trash put out in a public area for pick-up is not legitimate. Therefore the police may search through the trash that is in a public area without violating the federal constitution. (The Washington Supreme Court found that our state Constitution does protect one's privacy interest in trash.)

Examine certain "expectation of privacy" areas:

- **Residential premises**. An individual has a privacy interest in the interior of his/her **home**. A police search of the interior of a home can take place without police actually entering the home. If officers are able to monitor persons, objects or activities within the home that would not be observable in ordinary circumstances, a search has occurred, e.g., a search occurs when the government monitors an electronic device to determine whether a particular article or person is in the home at a particular time.

  A person may give up his or her privacy interest in an activity or object in the home by making the activity or object observable to persons outside. Defendants had no reasonable privacy interest in their activity at home when they positioned themselves in front of a picture window with lights on and drapes open. But a person does not relinquish privacy interest in the home by opening the door in response to a police officer's knock.

- **Curtilage** of residential premises consists of all buildings in close proximity to a dwelling which are continually used for carrying on daily affairs. Curtilage also includes areas necessary and convenient to a dwelling that are habitually used for family purposes. Structures within curtilage are considered to be within the "legitimate expectation of privacy;" those outside the curtilage are not.

  Criteria to determine extent of curtilage: (1) proximity to the home; (2) whether the area is included within an enclosure surrounding the home (like a fence); (3) nature of uses to which the area is put; and (4) the steps taken by resident to protect the area from observation by people passing by.

- **Adjoining Lands and Open Fields**. A reasonable expectation of privacy extends to the back yard and to areas immediately surrounding the home. Adjoining lands used as normal access routes by the general public are semi-private and not always protected.

  No reasonable expectation of privacy exists in open fields, wooded areas, vacant lots in urban areas, open beaches, reservoirs or open waters.

  Aerial surveillance is generally not considered a search.

- **Automobiles and Other Motor Vehicles**. Individuals have a reduced expectation of privacy in a vehicle.

- **Personal Characteristics**. Personal characteristics such as facial features, handwriting samples, and voice tone, which are continually exposed to the public are generally not protected by a legitimate expectation of privacy.

  Taking of blood samples, scraping under fingernails, taking fingerprints are searches. The difference is what is immediately observable.

- **Personal Effects and Papers**. Generally, the fifth amendment is used. However, the fourth amendment bars searches without warrants. A reasonable expectation of privacy does not continue in personal effects if the individual gives them up. For example, there is no fourth amendment protection for an object thrown from a moving car. The fourth amendment does apply to an item dropped by a taxicab passenger on the floor of a cab or when an individual carries an object covered with a blanket into the hallway of a building and sets it down to make a call at a phone thirty feet away.

  There is no reasonable expectation of privacy in items in plain view.

■ **Pass out the handout** "Search and Seizure Cases." Ask students to read each case, and working in pairs, decide whether or not there is a search or seizure, and if so, whether the search or seizure is a violation of the fourth amendment of the U.S. Constitution. Then go over the answers with the class.

Answers to Search and Seizure Cases:

1. A police officer is walking past Carl's home. From the sidewalk, through a large picture window, she sees Carl and

another man sitting at a table, measuring out a white powder into small plastic bags.

This is not a search because the police officer did not pry into a hidden place. Carl and the man were in "plain view." The officer, however, would have to get a warrant to enter the home and seize the white powder, unless the officer can show one of the exceptions to the warrant requirement, which will be discussed later.

2. Marta's mother suspects that Marta has been taking money from her purse and is hiding it under her bed. The mother goes into Marta's bedroom while Marta is at school and searches the room.

   There is a search, but the fourth amendment would not apply because there is no action by the government. The government, either state, federal or local, must be involved for the fourth amendment to apply.

3. Mr. Martinez, the school principal, suspects that Karina is selling drugs at school. Several students have reported seeing Karina outside school taking money from other students and handing them something. Mr. Martinez opens Karina's locker to look for drugs.

   This is a search. If it is a public school, the principal's actions are governed by the fourth amendment. Does Marta have a "legitimate expectation of privacy" in her school locker? Most students will probably say yes, but the Washington legislature says not.

   However, Mr. Martinez needs a "reasonable suspicion" to be able to search Karina's locker, under Washington's locker search statute. The reports from other students would probably satisfy this requirement, making the search legal. This school locker law will be discussed more fully later.

4. The police take Ricardo's fingerprints. They suspect he committed a burglary.

   This is a search, since Ricardo's fingerprints are not perceivable by the general public, like his face or voice. There is a legitimate expectation of privacy in one's fingerprints, so police must have probable cause that Ricardo committed the burglary to take his fingerprints.

■ **Explain to students** that police need a search warrant before they may search a place or person, unless an exception applies. Explain that a warrant is a piece of paper that is an actual court order. Refer students to the fourth amendment again. What does it say about warrants?
It says they must:

- Be issued upon probable cause
- Be supported by oath or affirmation
- Particularly describe the place to be searched and the person or things to be seized.

■ **Ask students** who is authorized to issue search warrants in Washington.
Search warrants must be issued by a

"magistrate," which includes judges from the supreme court, court of appeals, superior court and district court, court commissioners, as well as all municipal officers who have the power of district court judges. A police officer files an "affidavit" (the oath or affirmation) stating facts about the place to be searched or person or things to be seized that the magistrate reads and decides whether to issue the warrant.

■ **Point out** that the fourth amendment requires that warrants issue "upon Probable Cause." Ask students what that means.

This means that magistrates considering whether or not to permit the search must have a sufficient amount of information before issuing the warrant. The affidavit must give enough facts to convince the magistrate that there is "probable cause" that evidence of a crime will be found. If the information in the affidavit is not enough to amount to probable cause, the magistrate must deny the request for a warrant.

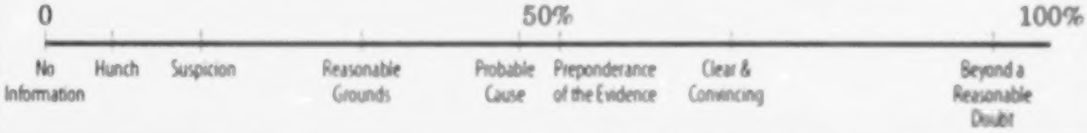
■ **Draw the line graph** below on the board to demonstrate probable cause.

■ **Explain each entry** on the chart. After (or while) reviewing this information, give students time to complete Part 3 of their Worksheets with this information, either working in pairs, or individually.

After students have completed the Worksheet, as an extension, ask them to come up with their own graphic illustration of the probable cause scale. How else would they illustrate it?

- **No Information** means that the officer doesn't know anything about the location of evidence linked to a crime.
- **Hunch** means that the officer has a gut feeling that something is not right, but the officer cannot point to any specific facts; it is something like intuition.
- **Suspicion** means that the officer knows a minor fact, or has some larger fact that came from an unknown or unreliable source that suggests that evidence may be located somewhere. For instance, an officer stops a person on the street to ask a question and the person quickly puts a hand in a pocket. Or, the officer may find a piece of paper on the street which says that a particular person is selling drugs.
- **Reasonable Grounds** (also called Reasonable Belief and Reasonable Suspicion) means that the officer knows several minor facts or a larger fact, or a large fact from a source of unknown reliability that points to a particular person engaging in some criminal activity. For example, a teacher standing outside a girls' bathroom smells cigarette smoke coming from the bathroom. The only two girls in the bath-

Scale that measures how much information and what kind of information.



room then leave together. The teacher has reasonable grounds, but not probable cause, to believe the girls have cigarettes in their purse (a violation of a school rule).

- **Probable Cause** means that an officer has enough evidence to lead a reasonable person to believe that the items searched for are connected with criminal activity and will be found in the place to be searched. For example, an increase of 200 to 300 percent in power consumption within a building is not enough alone to establish probable cause to believe that a drug growing operation is underway inside. However, such an increase with other suspicious facts including an anonymous phone call claiming that people at a certain place are growing drugs is enough for probable cause and a search warrant.
- **Preponderance of the Evidence** is the amount of evidence needed to be successful when suing in a civil case. It means that evidence must be "more likely than not," more than 50% in order to win.
- **Clear and Convincing Proof** is a higher amount of proof required in order to win in certain civil cases, for instance when the rights of a parent are to be terminated.
- **Beyond a Reasonable Doubt** is the highest amount of proof and is required to convict a person of a criminal charge. The Federal Judicial Center defines "reasonable doubt" as "proof that leaves you firmly convinced of the defendant's guilt."

■ **(Optional) Tell students** there is a rule that searches with a warrant are presumed to be reasonable (and therefore legal), while searches without a warrant are presumed to be unreasonable (and therefore illegal) unless they fall within a specific exception to the search warrant requirement. Give students a copy of the handout Exceptions to Search Warrant. Review the exceptions with the class.

■ **Ask students** what happens when a search is conducted that turns up evidence of a crime but also violated the U.S. Constitution. Explain that generally, the "exclusionary rule" applies. The exclusionary rule means that the evidence that was found in the illegal search will not be allowed to be introduced in court to prove that the defendant committed the crime. Also, any evidence which the police were led to as a result of the illegally seized evidence will be kept out of court.

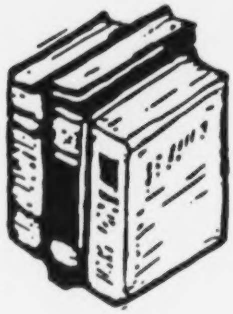
For example, the police believe that Jake is selling drugs. They search Jake's home in what turns out to be an illegal search. The police take a notebook that indicates who the drug buyers are by name and address, including a woman named Daisy Tufts at a given address, who bought a pound of cocaine on the date the police searched and found the notebook. The police may not use this notebook against Jake or the information regarding Daisy Tufts in a criminal case against her, since they obtained the notebook and information about Daisy Tufts as a direct result of their illegal search. If the police independently get information about Daisy or Jake, they may use the new evidence against either of them in court.

Some exceptions to the exclusionary rule have developed. For example, if the evidence would have been found anyway despite the illegal search, the evidence may be admitted. This is called the inevitable discovery exception.

Extension

To reinforce the probable cause scale, write each item on the scale on a card. Divide the class into 8 groups, and give each group one of the cards, representing one of the points along the scale (e.g., "no information," "reasonable grounds.") Tell them to keep their assignment private, as they will be playing a guessing game. Give students 10 minutes to plan a skit illustrating their assigned point on the scale. Then have each group do theirs and have the rest of the class guess where on the scale they are.

Search and Seizure Law Under the U.S. Constitution



United States Constitution, Fourth Amendment
The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

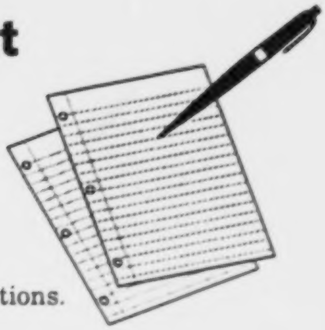
1. Underline the important words above in the Fourth Amendment of the U.S. Constitution.

2. The fourth amendment bans:
   - Unreasonable searches and seizures by the government
   - Of areas that fall within a legitimate
   - Expectation of privacy.

Framework for analysis:

- Was there a search or seizure?
- Was the government involved?
- Was it unreasonable?
- Was the search or seizure of an area within a legitimate expectation of privacy?

Search and Seizure Worksheet Part 1

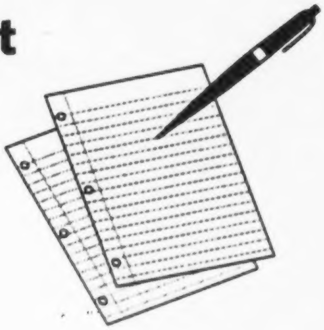


Directions: Fill in the blanks with the correct word or words.

Whether a search or seizure is valid under the fourth amendment can be analyzed by asking the following questions.

1. Was there a search or seizure?
2. Was the search conducted by the government? For the fourth amendment to apply the search must be conducted by the ________________ and this includes anyone who is an __________ of the government.
3. Is the search unreasonable? Whether or not a search is **unreasonable** depends upon the __________ ___ ___ __________________. As a general rule, searches with warrants are ________________ and searches without warrants are __________________ unless they fall within one of the stated exceptions to the warrant requirement.
4. Was there an expectation of privacy? **Expectation of privacy** means what individuals consider private.
5. Was the expectation of privacy legitimate? **Legitimate** means _________ __________ ___ ____________ ___ ___________.

Search and Seizure Worksheet Part 2



Residential Premises. An individual has a privacy interest in the interior of his or her ___________.

The home may include the area around the home, called the _________________. **Curtilage** of residential premises consists of all buildings close to a dwelling that are continually and regularly used for family purposes.

Adjoining Lands and Open Fields. A __________________ expectation of privacy extends to the back yard and to areas immediately around the home.

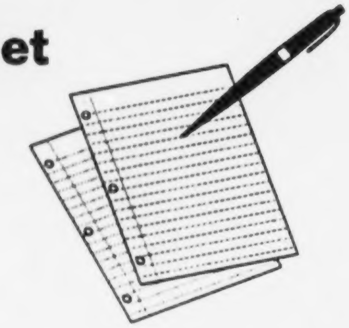
Automobiles and Other Motor Vehicles. Individuals have a ________________ expectation of privacy in a vehicle.

Personal Characteristics. Personal characteristics such as ___________ ___________, _________________ _____________, and __________ __________, which are continually exposed to the public are generally not protected by a legitimate expectation of privacy.

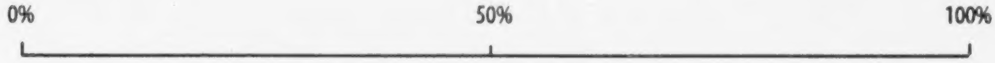
Taking of blood samples, scraping under fingernails, and taking fingerprints are searches. The difference is that these things are not immediately _____________.

There is no reasonable expectation of privacy in items in plain _________.

Search and Seizure Worksheet Part 3



Insert the following descriptive words along the scale at the correct point, from zero to 100%. Then write a definition of each descriptive phrase.



Preponderance of evidence

Reasonable grounds or reasonable suspicion

No information

Clear and convincing evidence

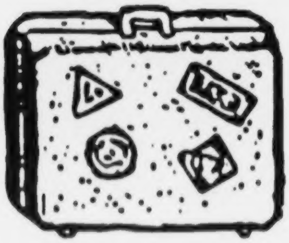
Probable cause

Beyond a reasonable doubt

Hunch

Suspicion

Privacy Opinion Poll



Directions: Read each statement and decide whether you expect that area to be private and free from intrusion by the government or government officials. Put YES if you expect privacy. Put NO if you do not expect privacy.

____ 1. Your garbage placed on the street in a garbage can to be picked by the city.

____ 2. Your carry-on bag at the airport.

____ 3. Your school locker.

____ 4. The numbers you have called from your home telephone.

____ 5. Conversations made on a cordless or cellular phone.

____ 6. What you are doing in your fenced-in back yard.

Search and Seizure Cases

Directions: Decide in each case whether there is a search or seizure. If there is, do you think there is a violation of the fourth amendment?

1. A police officer is walking past Carl's home. From the sidewalk, through a large picture window, she sees Carl and another man sitting at a table, measuring out a white powder into small plastic bags.

2. Marta's mother suspects that Marta has been taking money from her purse and is hiding it under her bed. The mother goes into Marta's bedroom while Marta is at school and searches the room.

3. Mr. Martinez, the school principal, suspects that Karina is selling drugs at school. Several students have reported seeing Karina outside school taking money from other students and handing them something. Mr. Martinez opens Karina's locker to look for drugs.

4. The police take Ricardo's fingerprints. They suspect he committed a burglary.

Exceptions to the Search Warrant Requirement

Search Incident to a Lawful Arrest permits search of the arrested person and the area with the person's immediate control, provided the custodial arrest is lawful and the area searched is restricted in time and place.

Immediately after a suspect has been arrested, handcuffed and placed in a patrol car, if the suspect was in a vehicle, officers are allowed to search the vehicle for weapons or evidence which can be destroyed. However, if they find a locked container or glove box, they may not unlock or search them without a search warrant. This is the rule under the State Constitution.

Searches Conducted in Good Faith and Without Purpose of Finding Evidence permit officers to search without a warrant. For example, to help someone who has been injured, to find a bomb that is about to explode, to identify an unconscious person.

Stop and Frisk allows an officer to forcibly stop a person when the officer has a reasonable suspicion of criminal activity. The officer may forcibly prevent the individual from leaving and may ask questions, however, the police cannot force the individual to answer. Failure to give information cannot form the basis of an arrest. Also, a pat down search may be done for weapons if the officer reasonably believes that this specific suspect is armed and presently dangerous.

When an individual voluntarily approaches police and police reasonably believe this person is armed and dangerous, officers may conduct a frisk for weapons.

When an officer makes a lawful investigative stop of a person in a vehicle and has objective reasons for believing that there may be a weapon in the vehicle, the officer may make a limited search of the passenger compartment for weapons within the reach of the suspect and any passengers.

Plain View includes three searches: (1) when an officer sees an item that is exposed to public view in a public place (also called open view); (2) when an officer enters lawfully into a constitutionally protected area (like a home) and sees a clearly exposed object; (3) when an officer standing in a place s/he has a right to be sees an object that is located inside a constitutionally protected area (like into a living room through a front window from the sidewalk).

To be a plain view search, the police must have a right to be where they are, they must find the incriminating evidence accidentally, and they must immediately realize that the object they see is evidence.

The plain view doctrine has been extended to "plain hearing," "plain smell," and "plain touch." Plain hearing allows officers to listen to conversations taking place in private areas. So if officers can hear a conversation in a motel room next to the suspects, they have a right to listen. Police may seize an object based on its odor when its odor establishes probable cause. For example, police can seize marijuana based on its odor coming from a car. Police may seize an item they feel and immediately believe to be contraband when they are conducting an otherwise lawful frisk.

Consent Searches require that the consent be voluntary, be given by a person with authority to consent and be limited to the scope of the consent given.

Consent is sometimes given by statute. For example, a person driving a motor vehicle in Washington gives implied consent to a blood test if he or she is arrested for vehicular homicide.

Exigent Circumstances applies when police have probable cause but do not get a warrant because of the need for an immediate search or seizure. This might be because delay could result in loss of the evidence, escape of the suspect, or harm to the public or police.

Hot Pursuit is one of the exigent circumstances in which police can make a warrantless entry into the suspect's house. Hot pursuit occurs if police attempt to arrest the suspect in a public place, the suspect retreats into the home, and the police reasonably fear that delay will result in escape, injury or destruction of evidence.

Vehicles are subject to special search rules because there is less expectation of privacy in a vehicle and because they can move easily. Warrantless searches of vehicles and unlocked compartments are allowed immediately following the arrest of the occupant of the vehicle.

Unless there is a valid spot check program, police may only stop a motor vehicle to check for violations when they have a reasonable suspicion of unlawful activity. The Washington Supreme Court ruled a checkpoint program to determine if drivers were intoxicated violates the federal and state constitutions.

Schools are considered a special environment in search and seizure law. Students can be searched with less than probable cause if: (1) prior to the search, school officials have a reasonable suspicion that a student has violated a school rule or law and (2) the search as it was actually conducted is reasonably related in scope to the circumstances that justified the search in the first place. To determine whether student searches are reasonable, the Washington court announced these criteria: the child's age, history and school record, the prevalence and seriousness of the problem in the school to which the search is directed, the need to make the search without delay and the reliability of the information used to justify the search.

There must be reasonable suspicion directed to each student who is searched. For example, a general concern about drugs will not justify searches of all students, but the school locker search statute allows the administration to search all lockers at any time.

International Borders are another special environment. Routine brief questioning of travellers at permanent checkpoints to identify illegal aliens is permitted and searches based on reasonable suspicion are permitted.

Administrative Searches, for example, for housing or fire code violations do not require warrants when made in accordance with a comprehensive legislative plan.

LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Search and Seizure

Lesson 3

Objectives
Students will:

- Read and analyse a law.
- Describe the purpose of a law.
- Create and enact situations illustrating the school locker law.

Materials
Copies of handout:

- School Locker Search Statute

Time Required
1 class period

Procedures
■ **Pass out** the School Locker Search Statute and have students in small groups read the law and then answer the questions.
Answers to questions:

1. What is the purpose of the law?

   The purpose of the law is to help school officials to maintain order and discipline and to protect students from exposure to illegal drugs, weapons and contraband.

2. Do students have a legitimate expectation of privacy in their school lockers? Give your reasons.

   The statute specifically denies that such an expectation of privacy exists.

3. When can a school official search all student lockers?

   The school official can search all lockers at any time. Individual lockers still require a reasonable suspicion. Specific containers in the locker may not be opened unless there is reasonable suspicion that a student has violated the law or a school rule and evidence will be found in the container. Point out that "reasonable suspicion" is less than probable cause. In other words, students in school have less privacy at school than when they are on the street or at home.

4. When can a school official search a student's bookbag?

   The official must have reasonable grounds or reasonable suspicion to suspect that the student has some item in violation of a law or school rule. Additionally, the search must be conducted in a reasonable way to obtain the item and the search of the bookbag may not be excessively intrusive in light of the age and sex

of the student and the nature of the suspected infraction.

5. When can a school official require a student to undress to find hidden contraband?

   The statute makes it clear that school officials may not conduct a strip search of students.

6. Do you think this law is fair? Give your reasons.

   This calls for opinions. Students may suggest that the law may not be constitutional regarding the school lockers. Why might the legislature give students less protection in school than when they are out of school?

■ **Ask students** to create short skits illustrating the law. Divide students into groups of 3 to 5 students each. Tell them each group will develop a 60-second vignette to illustrate one part of the law, or the whole concept, so that younger students would understand the law. Divide information from the previous lesson among the different groups, so that all information gets reviewed. Give them time to work, and then allow each group to present its vignette.

School Locker Search Statute

R.C.W. 28a.600.210-240—School Official Searches of Student Lockers
The legislature finds that illegal drug activity and weapons in schools threaten the safety and welfare of school children and pose a severe threat to the state educational system. School officials need authority to maintain order and discipline in schools and to protect students from exposure to illegal drugs, weapons, and contraband. Searches of school-issued lockers and the contents of those lockers is a reasonable and necessary tool to protect the interests of the students of the state as a whole.

No right nor expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school and the locker shall be subject to search for illegal drugs, weapons, and contraband as provided for by this statute.

A school principal, vice principal, or the principal's representative may search a student, the student's possessions, and the student's locker, if the principal, vice principal, or principal's representative has reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.

Except for strip and body cavity searches, the scope of the search is proper if the search is conducted as follows:

1. The methods used are reasonably related to the objectives of the search; and
2. The search is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

A principal or vice principal or anyone acting under their direction may not subject a student to a strip or body cavity search. In addition, the school principal, vice principal, or principal's representative may search all student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.

If the school principal, vice principal, or principal's representative, as a result of the search, develops a reasonable suspicion that a certain container in any student locker contains evidence of a student's violation of the law or school rule, he or she may search the container if the search is conducted as described above.

Questions:

1. What is the purpose of the law?

2. Do students have a legitimate expectation of privacy in their school lockers? Give your reasons.

3. When can a school official search all student lockers?

4. When can a school official search a student's bookbag?

5. When can a school official require a student to undress to find hidden contraband?

6. Do you think this law is fair? Give your reasons.

LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Search and Seizure

Lesson 4

Objectives

Students will:

- Review a U.S. Supreme Court case about school searches.
- Identify the steps of a trial and basic trial procedures.
- Enact a scripted mock trial about a school search.
- Analyze and apply the law of search and seizure in the school setting as jurors.

Materials

Copies of handouts:

- *N.J. v. T.L.O.* Case Study
- Steps in a Trial
- 10 copies of scripted trial for participants.
- Jury Verdict Form for each member of the jury.

Time Required

1 to 2 class periods.

Procedures

■ **Tell students** they will be enacting a mock trial, and everyone will play a role, either as a juror, lawyer, witness, judge or bailiff. Before the trial, however, it is necessary to review the law governing the case.

■ **Tell students** that a case very similar to the one they will enact was decided by the U.S. Supreme Court in 1985. That case was called *N.J. v. T.L.O.* (T.L.O. are the initials of the student involved. Since T.L.O. was a juvenile, her name is kept private.) We will be applying the rule of law from that case to our trial. Pass out the handout and ask students to read it. Check for understanding by asking the following questions:

1. Who is T.L.O.?
2. What happened to her?
3. What was the Supreme Court asked to decide:
4. What did the Court decide?

> **Note**: You may want to explain to students either before the trial or afterwards that in a real case the judge would decide prior to the trial whether the search was reasonable. For this lesson we are letting the jury decide, to increase students' knowledge and participation as jurors.
>
> In explaining the law, focus on the rule from the case with students, as the result of the real case could influence students in their trial. The facts

in the real case were different than in our scripted trial, since the principal saw the cigarette rolling papers during his initial search of the purse for cigarettes. Searching further, he found the marijuana, a pipe, and a list of students who owed T.L.O money. The Supreme Court found that the search was reasonable because the discovery of the rolling papers gave rise to a reasonable suspicion that she had marijuana in the purse, and therefore justified the continued search.

- **Ask for volunteers** to play the roles of judge, attorneys, witnesses and bailiff in the trial. There are 10 roles, listed at the beginning of the trial.

- **Arrange your classroom** as a courtroom, with the judge in front of the room, a chair for the witness beside the judge, and tables for the attorneys, at an angle both facing the judge and the jury (the rest of the class).

- **Tell students** who are not assigned a scripted role that they will be jurors and will be responsible to listen carefully to the testimony, and make a decision at the end of the trial. Remind attorneys and witnesses to direct their comments to both the judge and the jury.

- **Explain to students** that trials follow a certain order. Review the handout, Steps of a Trial, with students.

- **When students are ready**, ask the Bailiff to call the court to order, and let the trial proceed. Depending on the level of your class, you may wish to stop the trial at certain points to discuss what step they are on and the evidence.

- **After the closing arguments**, ask the jury to select a foreperson, then to discuss the case in front of the entire class. Make sure they understand the verdict form, and that each juror has a chance to state his or her view. Jurors may refer to the *N.J. v. T.L.O.* handout also. (If you have a large jury, you may not be able to reach a unanimous verdict in the time allotted. If that is the case, just get a count. When the jury cannot reach a unanimous verdict in a criminal case, the judge declares a mistrial.)

- **Be sure to thank** all participants in the trial when the trial is over.

New Jersey v. T.L.O.

Facts: T.L.O., a high school student, was accused of smoking cigarettes in the school bathroom. The school principal searched her purse and found cigarettes. He also noticed a package of cigarette rolling papers. The principal then continued to search the purse thoroughly and found marijuana and an index card listing students that owed T.L.O. money. T.L.O. was later charged with possession of marijuana.

T.L.O. objected to the search and said that it was unconstitutional. She asked that the marijuana be excluded from evidence because the search was illegal.

The Supreme Court was asked to decide what rules a school principal must follow when searching a student.

Rule: The Supreme Court decided that to search a student, a school official must have a "reasonable suspicion" that the search will turn up evidence that the student violated a school rule or law.

The Court said that a two-part test should be applied to decide whether a search by a school official was reasonable. This test is:

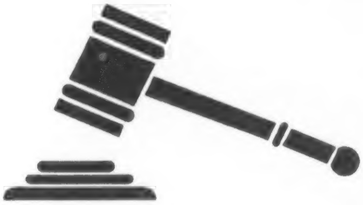
1. The search must be justified at the beginning; that is, there must be reasonable suspicion that the search will discover evidence of violation of a school rule or law; and
2. The search must be reasonably related in scope to the circumstances that justified the search in the first place.

   To be reasonably related in "scope," the search must comply with these rules:

   a. The procedures used must be related to what the search is looking for; and

   b. The procedures must not be too intrusive, taking into account the student's age, sex, and the nature of the offense.

Steps of a Criminal Trial



1. **Opening statements** by prosecution attorney and defendant's attorney.

2. **Prosecution** presents its case, by calling the witnesses it has selected to prove its case. The testimony of each witness proceeds as follows:
    a. Direct examination by prosecution attorney
    b. Cross examination by defendant's attorney

3. **Defendant** presents its case, by calling the witnesses it has selected to rebut the prosecution's case. The testimony of each witness proceeds as follows:
    a. Direct examination by defendant's attorney
    b. Cross examination by prosecution attorney

4. **Closing arguments**. Prosecution goes first, then defendant. Prosecution has an opportunity to rebut the defense's closing (the "last word").

5. **Decision or verdict** by "trier or fact," which may be either judge or jury.

Washington v. Jamie L. Curtis

(This trial was written by Robert S. Leming, Indiana Program for Law-Related Education, 1992. The trial has been adapted for use with this curriculum. Used with permission.)

Participants

Judge—J. Marshall
Bailiff—Pat Warren
Defendant—Jamie L. Curtis
Defense Counsel #1—Kim Brandeis
Defense Counsel #2—Sandy Brennan
Prosecution #1—Shawn Thomas
Prosecution #2—Tracy O'Connor
Witness for the Defense—Professor K. Hall
Witness for the Prosecution—Jan Borman, Teacher
Witness for the Prosecution—Assistant Principal Weeks
Jurors (1-12 or more)

Bailiff: (Stand) All rise. The Superior Court for the State of Washington is now in session. The Honorable J. Marshall presiding.

Judge: (Enter the room and take your seat) Please be seated. This is the case of the State of Washington versus Jamie L. Curtis which involves the charge that the defendant violated R.C.W. 69.50.401 and is charged with possession of less than 30 grams of marijuana. Court is now in session. (Strike the gavel) Is the Prosecution ready?

Prosecution #1: (Stand) Yes, Your Honor. (Sit down)

Judge: Is the Defense ready?

Defense #1: (Stand) Yes, Your Honor. (Sit down)

Judge: (Look at the prosecution) Counsel, you may proceed with your opening statement.

Prosecution #1: (Stand, walk around the table and look at the judge and the jury) Your Honor, the State will prove beyond a reasonable doubt that the defendant, Mr./Ms. Jamie Curtis violated R.C.W. 69.50.401 and by doing so is guilty of the charge of possession of less than 30 grams of marijuana. The State will show the following facts in this case. On the morning of November 27, 1993, Assistant Principal Weeks was informed by a teacher that a student, Jamie Curtis, was smoking a cigarette in one of Privacy High School's restrooms. In the office, Assistant Principal Weeks asked Jamie Curtis, if in fact he/she was smoking. Jamie Curtis denied smoking in the restroom. Having a reasonable suspicion that Jamie had violated a school rule, Assistant Principal Weeks asked Jamie to hand over his/her book bag. In the book bag, Assistant Principal found cigarettes. Assistant Principal Weeks decided to look further into the book bag and found a plastic bag with a small amount of marijuana. He/she then called the police. Upon their arrival, Jamie was read his/her rights and arrested for possession of marijuana.

Ladies and Gentlemen of the Jury, the State will rely on two witnesses to prove its case. They will testify that Jamie Curtis is guilty of the crime charged. You will hear from Mr./Ms. Jan Borman, the teacher who discovered the wrongdoing and witnessed the search of Jamie's book bag in the assistant principal's office. You will also hear from Assistant Principal Weeks, who will testify that he/she acted in a reasonable manner in conducting the search of Jamie Curtis's book bag. Ladies and gentlemen, I believe after hearing this evidence and weighing the evidence, you will find that the search was reasonable under the circumstances, and that Jamie Curtis is guilty of possession of marijuana. Thank you. (Sit down)

JUDGE: Thank you. The Court will now hear the Defense's opening statement.

DEFENSE #1: (Stand, walk around the table and look at jury) Your Honor, the Defense intends to show the following facts in this case. First of all, according to *New Jersey v. T.L.O.*, a school official must have reasonable grounds to initiate a search of a student. Assistant Principal Weeks did not have reasonable grounds to search Jamie. Secondly, Weeks did not have reasonable grounds to continue the search after finding cigarettes in Jamie's book bag. In this case, there were no reasonable grounds to begin a search, or to continue the search. Therefore, the action taken by the assistant principal denied Jamie his/her fourth amendment right to be protected against unreasonable searches and seizures.

Ladies and Gentlemen of the Jury, the search that the assistant principal conducted was illegal. The evidence gathered in this search should not be used in this case. In the important 1961 case of *Mapp v. Ohio*, the U.S. Supreme Court expanded the rights of the accused by deciding that evidence collected in an illegal manner cannot be used against a defendant. The Exclusionary Rule means that evidence gathered without a warrant or without probable cause should not be used to find a defendant guilty. Through the testimony of Jamie Curtis and Professor K. Hall, you will hear how Jamie's fourth amendment right to be protected against unreasonable searches and seizures has been violated. I ask you to listen to the testimony of these witnesses carefully, and think about whether or not the search was reasonable. I believe that you will find that the search was unreasonable from the beginning and therefore the evidence being presented by the prosecution has been collected illegally. Thank you. (Sit down)

Judge: Thank you. Will the Prosecution please call its first witness.

Prosecution #1: (Stand) The state calls Mr./Ms. Jan Borman. (Sit down)

Borman: (Move to witness stand and remain standing)

Bailiff: (Approach witness stand) Raise your right hand, please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Borman: I do. (Sit down)

Bailiff: (Return to your chair)

Prosecution #1: (Stand and approach the witness) State your name for the court, please.

Borman: Jan Borman

Prosecution #1: Where do you work, Mr./Ms. Borman?

Borman: I am a teacher at Privacy High School.

Prosecution #1: Were you at school on the morning of November 27, 1993?

Borman: Yes, I was.

Prosecution #1: Did anything unusual happen that day?

Borman: I should say so; I caught a drug dealer smoking cigarettes in the restroom.

Defense #1: (Stand) Objection, your Honor. The witness is expressing an opinion. (Sit down)

Judge: Sustained. (Look at the jury) Please disregard the witness's statement.

Prosecution #1: Mr./Ms. Borman, please tell the jury what happened on the morning in question.

Borman: Just before first period was about to begin, I was walking past the restrooms as Jamie Curtis was coming out. I saw and smelled cigarette smoke coming from the restroom. I peeked into the restroom and saw no one else in there.

Prosecution #1: What happened then?

Borman: I accused Jamie of smoking cigarettes and asked him/her to follow me down to the assistant principal's office.

Prosecution #1: What happened next?

Borman: Assistant Principal Weeks asked Jamie if he/she had been smoking.

Prosecution #1: How did Jamie respond?

Borman: Jamie lied and said he/she hadn't been smoking.

Defense #2: (Stand) Objection, Your Honor. The witness is expressing an opinion. (Sit down)

Judge: Sustained. (To the witness) Please keep to the facts.

Prosecution #1: What happened after that?

Borman: Assistant Principal Weeks asked Jamie to see his/her book bag.

Jamie Curtis: (Stand) That's a lie! Assistant Principal Weeks made me give him/her the book bag. (Sit down)

Judge: (Strike the gavel) Will the defendant please refrain from any outbursts in the courtroom. (To the Prosecution) Please continue.

Prosecution #1: What happened after Jamie gave the book bag to Assistant Principal Weeks?

Borman: Assistant Principal Weeks looked in the book bag and found a pack of cigarettes.

Prosecution #1: What happened next?

Borman: Weeks looked all through the bag.

Prosecution #1: Why did Assistant Principal Weeks decide to look further into the book bag?

Defense # 2: (Stand) Objection, your honor. Counsel is asking a question for which this witness has no firsthand knowledge. This witness does not know why Weeks looked into the bag.

Judge: Sustained. Ask another question, counsel.

Prosecution #1: Did he/she find anything else in the bag?

Borman: Yes, Assistant Principal Weeks found a plastic bag with a small amount of marijuana.

Prosecution #1: (Give prosecution's exhibit "A" to Bailiff for marking) Your Honor, I ask that this plastic bag containing marijuana be marked for identification as Prosecution's exhibit "A."

Bailiff: (Mark with a letter "A" and hand back to the prosecution)

Prosecution #1: (Show the evidence to the witness) Do you recognize this plastic bag which is marked Prosecution's Exhibit "A"?

Borman: Yes, it is the plastic bag that Assistant Principal Weeks found in Jamie's book bag.

Prosecution #1: (Place the evidence back on your table and look at judge) Your Honor, I offer this plastic bag for admission into evidence as Prosecution's Exhibit "A" and ask the Court to so admit it.

Judge: Any objection from the defense to admission of this evidence?

Defense # 1: No, your Honor.

Judge: It is admitted. You may proceed.

Prosecution #1: Thank you, Mr./Ms. Borman. I have no further questions, Your Honor. (Look at the defense) Your witness. (Hand the bag to the Bailiff and sit down)

Defense #1: (Stand and approach the witness) Mr./Ms. Borman, how long have you been a teacher?

Borman: This is my second year.

Defense #1: So you are not a very experienced teacher, are you?

Prosecution #1: (Stand) Objection, Your Honor. This line of questioning is irrelevant to the case. (Sit down)

Defense #1: Your honor, it is relevant how much experience this witness has dealing with students.

Judge: Objection sustained. Please continue.

Defense #1: Why did you not believe Jamie when he/she denied smoking cigarettes in the restroom?

Borman: You can't believe kids like Jamie. Believe me, I can tell when someone is lying.

Defense #1: Isn't it true that last year you got an award for confronting the most students for smoking on school grounds?

Borman: (Very proud) Yes, that's true, I did get an award.

Defense #1: And isn't it true that more than half of those students denied smoking?

Borman: Yes, but they all lied!

Defense #1: How can you be absolutely sure that it was Jamie who was smoking cigarettes in the restroom?

Borman: Look, I know what I saw and smelled. I saw no one else in the restroom. Therefore, I think it was reasonable for Assistant Principal Weeks to conduct the search. That's what I would have done.

Defense #1: Mr./Ms. Borman, isn't it possible there was someone else hiding in one of the bathroom stalls, and that person could have been the one smoking?

Borman: I don't think so.

Defense #1: Mr./Ms. Borman, do you think that it is possible that Assistant Principal Weeks violated Jamie's fourth amendment right to be protected against unreasonable searches and seizures when he/she searched the book bag after the cigarettes were found?

Borman: No, I do not.

Defense #1: Your Honor, I have no further questions. (Sit down)

Judge: (Look at the witness) You may step down. (Look at the Prosecution) Will the Prosecution please call its next witness.

Prosecution #2: (Stand) The Prosecution calls Assistant Principal Weeks to the stand. (Sit down)

Weeks: (Move to the witness stand and remain standing)

Bailiff: (Approach the witness stand) Raise your right hand, please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Weeks: I do. (Sit down)

Bailiff: (Return to your seat)

Prosecution #2: (Stand and approach the witness) State your name for the court.

Weeks: My name is Assistant Principal Weeks.

Prosecution #2: How long have you worked at Privacy High School?

Weeks: I taught high school government for ten years and I have been the assistant principal for the past five years.

Prosecution #2: Do you have a family?

Weeks: Yes I do. I have been married for eight years, I have two children and I teach Sunday School at our local church.

Prosecution #2: What happened on the morning of November 27, 1993?

Weeks: Just before first period, Mr./Ms. Borman came to my office with Jamie Curtis.

Prosecution #2: Did Borman tell you that Jamie had been smoking?

Defense #1: (Stand) Objection, your Honor. The Prosecution is leading the witness. (Sit down)

Judge: Sustained. Please rephrase your question.

Prosecution #2: What happened next?

Weeks: Mr./Ms. Borman explained to me that he/she suspected Jamie of smoking cigarettes in the restroom.

Prosecution #2: What did you do, then?

Weeks: I asked Jamie if he/she had been smoking.

Prosecution #2: How did Jamie respond?

Weeks: Jamie denied it.

Prosecution #2: Is there a school policy that deals with cigarettes?

Weeks: Yes, there is. It states that cigarette products are not allowed on school grounds.

Prosecution #2: What happened next?

Weeks: I asked Jamie for his/her book bag.

Jamie: (Stand) That's a lie, you scared me into giving you the book bag! (Sit down)

Judge: (Pound the gavel) One more outburst like that young man/lady and I will have you removed from this courtroom.

Jamie: (Stand) I'm sorry, your Honor. (Sit down)

Judge: (Look at the Prosecution) Please continue.

Prosecution #2: Did Jamie give you his/her book bag?

Weeks: Yes, Jamie did.

Prosecution #2: What happened next?

Weeks: I looked into the book bag and found cigarettes.

Prosecution #2: Did you stop searching the bag at this point?

Weeks: No, I did not.

Prosecution #2: Why, then, did you continue to search the bag?

Weeks: As I was taking the cigarettes out of the book bag, I remembered that I had recently spoken with a teacher who believed Jamie might be smoking more than just cigarettes. I thought it would be reasonable to continue the search. Who knows what you might find.

Prosecution #2: In other words, you had reasonable suspicion to believe that possibly more cigarettes were in the book bag and maybe drugs too.

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Defense #2: (Stand) Objection, your Honor. The Prosecution is leading the witness. (Sit down)

Judge: Sustained, please rephrase the question.

Prosecution #2: What, if anything, did you discover in the more thorough search?

Weeks: I did a complete search of the book bag and found a plastic bag containing a small amount of marijuana in a side pocket.

Prosecution #2: What did you do then?

Weeks: I called the police. They came to the school, read Jamie Curtis her/his rights and arrested Jamie on the charge of possession of marijuana.

Prosecution #2: I have no further questions, your Honor. (Look at the Defense) Your witness. (Sit down)

Defense #2: (Stand and approach the witness) Assistant Principal Weeks, you testified that Jamie gave you the book bag after you asked for it. Is this not correct?

Weeks: Yes, that is correct.

Defense #2: In your position as assistant principal, isn't it possible for you to intimidate or scare students?

Weeks: I'm not sure what you mean.

Defense #2: Wouldn't you say that you possess a certain amount of control over the students at Privacy High School?

Weeks: I would say that an effective assistant principal has to exert a certain amount of control over students to ensure discipline and a healthy learning environment.

Defense #2: Isn't seizing a book bag through intimidation kind of like getting a forced confession?

Weeks: No, I wouldn't say so.

Defense #2: Do you honestly believe that there was enough evidence that suggested that Jamie was violating a school rule to begin a search of his/her bookbag?

Weeks: Yes, I do.

Defense #2: Assistant Principal Weeks, you testified that after finding the cigarettes in Jamie's book bag you continued to search because you had a suspicion about Jamie.

Weeks: Yes, that is true.

DEFENSE #2: Assistant Principal Weeks, do you consider a book bag to be a student's private property? In other words, does a person have a reasonable expectation of privacy in his or her book bag?

WEEKS: Yes, I would say so.

DEFENSE #2: Even though a student has an expectation of privacy, you went ahead and searched the book bag without a reasonable suspicion or without probable cause?

WEEKS: No, no, I had reasonable suspicion! Besides I found drugs, doesn't that count for something?

DEFENSE #2: Assistant Principal Weeks, the word of a teacher who did not even thoroughly check the restroom for other students is not grounds for reasonable suspicion. I have no further questions, your Honor. (Sit down)

JUDGE: (Look at the witness) You may step down. (Look at the Prosecution) Will the Prosecution call its next witness.

PROSECUTION #2: (Stand) Your Honor, the State rests. (Sit down)

JUDGE: (Look at the Defense) Will the Defense call its first witness?

DEFENSE #1: (Stand) The Defense calls Professor K. Hall to the stand. (Sit down)

HALL: (Move to the witness stand and remain standing)

BAILIFF: (Approach witness) Raise your right hand, please. Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?

HALL: I do (Sit down)

BAILIFF: (Take your seat)

DEFENSE #1: (Stand and approach the witness) State your name for the Court.

HALL: Professor K. Hall.

DEFENSE #1: Professor Hall, where do you work?

HALL: I am a professor of law at the University of Washington.

DEFENSE #1: How long have you worked there?

HALL: I have taught law for the past 20 years.

DEFENSE #1: Are you familiar with the Exclusionary Rule and the fourth amendment's protection against unreasonable searches and seizures?

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Hall: Yes, I am. One of the courses I teach covers this topic. In addition, I have written several articles dealing with the fourth amendment.

Defense #1: Professor Hall, can you explain what the Exclusionary Rule is?

Hall: In 1914 the Exclusionary Rule was first applied by the U.S. Supreme Court for two major reasons. First, they used the analogy that "the fruit of a poisoned tree is as poisonous as the tree itself." That means if a search is illegal, the evidence found is illegal. For example, evidence found by public school officials as a result of an illegal search is stained with illegality and injustice. And second, if the courts use this evidence to find someone guilty of a crime, they have participated in the illegality, and their decisions are unjust.

Defense #1: What about searches and seizures?

Hall: In order to obtain a search warrant from a judge, a police officer needs probable cause that a crime has been committed and the warrant must be very specific.

Defense #1: Have there been cases where evidence was ruled out because of how the search was done?

Hall: Oh, yes. In 1961, the U.S. Supreme Court overturned the conviction of Ms. Mapp, who was found guilty of possessing pornographic materials, because the police search of her house was found to be illegal.

Defense #1: In your expert opinion, did Assistant Principal Weeks have reasonable suspicion to begin a search of Jamie's book bag and continue the search after the cigarettes were found?

Prosecution #2: (Stand) Objection, your Honor. Defense is asking the witness to give an opinion on the ultimate issue in the case. (Sit down)

Defense #1: Your Honor, I believe that I have established that Professor Hall is an expert concerning constitutional issues, therefore he/she should be allowed to answer the question.

Judge: Overruled. (To the witness) You may answer the question.

Hall: No, I do not believe that Assistant Principal Weeks had a reasonable suspicion to search the book bag in the first place. But even if cause for the initial search existed, there were not grounds to continue the search further into the bag after the cigarettes were found. I believe people have an expectation of privacy, especially when privacy involves something like a personal book bag.

Defense #1: Professor Hall, what is the difference between probable cause and reasonable suspicion?

Hall: Reasonable suspicion is less information than probable cause. In 1985, the U.S. Supreme Court decided the case of *New Jersey versus T.L.O.* In that case, the Court ruled that a principal of a school does not need probable cause to search a student's belongings; rather, the principal needs only reasonable suspicion to conduct a search. And the search must pass a two-pronged test that both the reason to begin the search and the scope of the search must be reasonable.

Defense #1: Based on what you have just told the Court, would you agree that the search of Defendant Jamie Curtis's book bag was based on a reasonable suspicion?

Prosecution #2: (Stand) Objection, your Honor, counsel is leading the witness. (Sit down)

Judge: Sustained. Please rephrase your question.

Defense #1: In your expert opinion, was the search of Jamie's book bag based on reasonable suspicion?

Hall: I believe the original search was not based on a reasonable suspicion. I also believe that Weeks should not have continued the search into the book bag after finding the cigarettes. Therefore the evidence gathered by the search should be excluded and should not be considered in any decision made by this court.

Defense #1: Did Assistant Principal Weeks deny Jamie his/her fourth amendment right to be protected against unreasonable searches and seizures?

Hall: Yes, I believe that Assistant Principal Weeks did not have a reasonable suspicion to begin or continue the search, therefore Jamie's fourth amendment right was violated.

Defense #1: No further questions, your Honor. (Look at the Prosecution) Your witness. (Sit down)

Prosecution #1: (Stand and approach the witness) Professor Hall, you testified that there is a difference between probable cause and reasonable suspicion, did you not?

Hall: Yes, I did.

Prosecution #1: Isn't it true that having reasonable suspicion is a lot less than having probable cause?

Hall: It is certainly less, but I do not know how much less.

Prosecution #1: Isn't it true that a school official generally does not need a search warrant to search a student's belongings?

Hall: Yes, it is true.

Prosecution #1: Professor Hall, you testified that you believed that Assistant Principal Weeks denied Jamie his/her fourth amendment rights by continuing to search the book bag, did you not?

Hall: Yes, I did.

Prosecution #1: Isn't it true that in 1986, Retired Chief Justice Warren Burger, writing the majority opinion in *Bethel School District v. Fraser*, suggested that students in school settings do not automatically have the same rights as adults?

Hall: Yes, you are correct.

Prosecution #1: Then, isn't it possible that Assistant Principal Weeks did not violate Jamie's fourth amendment rights because the search took place in a school and was conducted with reasonable suspicion?

Hall: I guess it is possible.

Prosecution #1: I have no further questions, your Honor. (Sit down)

Judge: (To the witness) You may step down. (Look at the Defense) Counsel, you may call your next witness.

Hall: (Return to your chair)

Defense #2: (Stand) Your Honor, the Defense calls the defendant, Jamie L. Curtis, to the stand. (Sit down)

Jamie: (Move to the witness stand and remain standing)

Bailiff: (Approach the witness) Raise your right hand, please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Jamie: I do. (Sit down)

Bailiff: (Return to your chair)

Defense #2: (Stand and approach the witness) State your name for the Court.

Jamie: My name is Jamie L. Curtis.

Defense #2: Jamie, where do you go to school?

Jamie: I am a junior at Privacy High School.

Defense #2: Tell us about the morning of November 27th, 1993.

Jamie: Well, I was getting ready to go to my first hour class. As I was leaving the restroom, Mr./Ms. Borman stopped me and accused me of smoking cigarettes in the restroom. I told him/her I wasn't smoking, but he/she did not believe me because he/she smelled smoke, so I.....

Prosecution #1: (Stand) Objection, your Honor. The witness is giving us a narrative. (Sit down)

Judge: (To the witness) Please keep your answers brief and to the point. (To the defense) Counsel, please ask the witness more specific questions.

Defense #2: Jamie, what happened after Mr./Ms. Borman told you he/she did not believe you?

Jamie: I told Mr./Ms. Borman that the restroom always smells like cigarette smoke.

Defense #2: What did Mr./Ms. Borman say?

Prosecution #1: (Stand) Objection, your Honor. The question is asking for hearsay. (Sit down)

Judge: Sustained. Counsel, please rephrase your question.

Defense #2: What happened next?

Jamie: Mr./Ms. Borman took me down to the Assistant Principal's office anyway.

Defense #2: What happened in the assistant principal's office?

Jamie: Assistant Principal Weeks told me to give him/her my book bag.

Defense #2: Did Assistant Principal Weeks ask you if he/she could look into your book bag?

Jamie: No he/she did not. He/She opened the book bag and began to look through it.

Defense #2: Did the assistant principal find anything?

Jamie: Yes, he/she found cigarettes, but I wasn't smoking them in school.

Defense #2: What happened next?

Jamie: For no reason, Assistant Principal Weeks continued to search my book bag.

Defense #2: Jamie, do you ever carry any personal items in your book bag?

Jamie: All the time. I carry important phone numbers, notes from friends, and other personal things. I don't expect people to look inside. It's private.

Defense #2: Your Honor, I ask that this book bag be marked for identification as Defense's Exhibit "A." (Hand the book bag to the bailiff for marking)

Bailiff: (Mark the book bag with an "A" and hand the book bag back to the Defense)

Defense #2: (Show the book bag to the witness) Jamie, do you recognize this book bag which is marked as Defense's Exhibit "A"?

Jamie: Yes, it is mine.

Defense #2: Your Honor, I offer this book bag for admission into evidence as Defense Exhibit "A" and ask the Court to so admit it.

Judge: Any objection from the Prosecution?

Prosecution #1: No, your honor.

Judge: It is admitted. You may proceed.

Defense #2: Show the Court where Assistant Principal Weeks found the cigarettes.

Jamie: Assistant Principal Weeks opened the book bag. (Show the jury) Right on top were the cigarettes.

Defense #2: Jamie, are you aware that Assistant Principal Weeks also found a small amount of marijuana in your book bag?

Jamie: Yes, but I don't know how it got there.

Weeks: That's a lie!

Judge: (Hit the gavel) One more outburst like that and I will have you removed from this courtroom.

Defense #2: Show the Court where Assistant Principal Weeks found the marijuana in your book bag.

Jamie: He/She found the marijuana in a side pocket.

Defense #2: You mean that Assistant Principal Weeks searched all through your book bag and then searched in a side pocket too?

Prosecution #1: (Stand) Objection, your Honor. Counsel is leading the witness. (Sit down)

Judge: Sustained. Please rephrase your question.

Defense #2: No further questions, your Honor. (To the Prosecution) Your witness. (Sit down)

Prosecution #2: (Stand and approach the witness) Jamie, you testified that you don't know how the marijuana got in your book bag. Is that not true?

Jamie: Yes, I don't know.

Prosecution #2: It seems pretty unlikely that the marijuana just appeared in your book bag. How do you explain it being there?

Jamie: I can't. I guess someone put it in the pocket of my book bag when I was in the restroom.

Prosecution #2: That seems highly unlikely.

Jamie: I don't know, I tell you! But one thing I know, it's not mine!

Prosecution #2: Jamie, do you think it is the assistant principal's job to make sure that students are following school rules?

Jamie: Yes, it is part of the job.

Prosecution #2: And do you think it is part of the job of the assistant principal to ensure that Privacy High School is drug-free?

Jamie: I guess so.

Prosecution #2: Don't you think it was understandable for Assistant Principal Weeks to search your book bag, especially when you understand his/her job responsibilities?

Jamie: No, I do not. Mr./Ms. Weeks did not have enough evidence to search through my book bag. I wasn't smoking cigarettes and the marijuana is not mine.

Prosecution #2: I have no further questions, your Honor. (Sit down)

Judge: (To the witness) You may step down. (To the Defense) Will the Defense call its next witness?

Defense #1: (Stand) The Defense rests, your Honor. (Sit down)

Judge: (Look at the Prosecution) Does the Prosecution wish to make a closing argument?

Prosecution #2: (Stand) We do, Your Honor.

Judge: You may proceed.

Prosecution #2: (Approach the jury) Ladies and gentlemen of the jury, I want to thank you for being so patient during this very important trial. The State has proven beyond a reasonable doubt that the Defendant, Jamie L. Curtis, is guilty of violating R.C.W. 69.50.401, possession of less than 30 grams of marijuana. Through the testimony of Jan Borman, a teacher at Privacy High School, you have heard how he/she discovered

Jamie smoking in a school restroom. You have heard how Mr./Ms. Borman escorted Jamie to the assistant principal's office where Assistant Principal Weeks searched Jamie's book bag, having a reasonable suspicion to do so. From the testimony of Assistant Principal Weeks, you have heard how he/she not only found cigarettes, but also found a small amount of marijuana inside Jamie's book bag. Assistant Principal Weeks did not violate Jamie's fourth amendment right to be protected from unreasonable searches and seizures because the search was reasonable.

Ladies and gentlemen, the State again thanks you for your civic participation and asks that you return a verdict of guilty. (Sit down)

Judge: (Look at the Defense) Does the Defense wish to make a closing argument?

Defense #2: (Stand) We do, your Honor.

Judge: You may proceed.

Defense #2: (Approach the Jury) Ladies and gentlemen of the jury, the Defense would also like to thank you for your time and patience in listening here today. I agree with the prosecution on one point. This is an important trial. It is important because a citizen's right to be protected against unreasonable searches and seizures is a fundamental part of our Bill of Rights. It is the protection that ordinary people have against intrusions from the State. From the testimony of Professor K. Hall, you heard how evidence that is gathered without a reasonable suspicion should not be used to prove guilt. The search of Jamie's book bag was highly questionable. Assistant Principal Weeks based the decision to search upon the word of a teacher who did not thoroughly investigate the situation. S/he continued to search the bag after finding the cigarettes, even though there was no reasonable suspicion that further evidence would be found. This went beyond the scope of the original reason to search. People in a democracy have an expectation of privacy when it comes to personal items like book bags. From the testimony of Jamie Curtis, you heard how the search was conducted and that Jamie denies both smoking in the restroom and knowledge that the marijuana was in the bag.

Ladies and gentlemen, there is a reasonable doubt that Jamie is guilty of the charge brought by the State. Jamie's fourth amendment right to be protected from unreasonable searches and seizures has been violated. I ask that you find the defendant, Jamie Curtis, not guilty. Thank you. (Sit down)

Judge: (Look at Prosecution) Counsel, do you wish to make a rebuttal argument?

Prosecution #2: (Stand) Yes your honor. (Approach the jury again) Ladies and gentlemen, this is my last chance to speak with you. Once again, I ask you to carefully consider the evidence you have heard today. The witnesses presented by the prosecution are a well respected teacher and an administrator of our local high school, I ask you to weigh their testimony against this professor, who has no real knowledge of the facts of the case, and the defendant's testimony. I believe that you will find the defendant guilty. Thank you for your time and careful consideration.

Judge: (Look at the Jury) You have heard the evidence in this case. It is now your job to decide whether the Defendant, Jamie L. Curtis, is guilty of possession of marijuana. Let me remind you that if you believe that the search of Jamie's book bag was initiated without reasonable suspicion or was not reasonably related in scope to the original reason for the search, then you may find the defendant not guilty, even if you believe the marijuana was Jamie's. However, if you believe the search was reasonable in its inception and scope, then you must find the defendant guilty. Please go with the Bailiff to the jury room and complete the verdict form I will give you. When you have reached a unanimous verdict, please return to the courtroom and inform the Court.

*[**Note**: The teacher may wish to have the jury deliberate in front of the rest of the class.]*

Bailiff: All rise.

Jury: (Follow the bailiff to the jury room)

Judge: (After jury has left) Please, be seated.

[After jury has reached a verdict.]

Jury: (Return to the jury box)

Bailiff: All rise.

Judge: Please be seated. Have you reached a verdict?

Head Juror: (Stand) Yes, your Honor.

Judge: Please read the verdict.

Head Juror: We find the defendant Jamie L. Curtis, Guilty/Not Guilty.

Judge: This Court is adjourned. (Strike the gavel)

Jury Verdict Form

In this case, you have to decide whether or not Jamie L. Curtis is guilty of the charge of possession of marijuana.

Questions to consider—In order to determine the guilt or innocence of Jamie, please consider the following questions:

1. Do you believe the initial search of Jamie's book bag by Assistant Principal Weeks was based on reasonable suspicion?

   ☐ Yes ☐ No

2. Do you believe the search by Assistant Principal Weeks was reasonably related in scope to the reason s/he searched the book bag in the first place?

   ☐ Yes ☐ No

If you answered yes to both questions, you *should* find the defendant, Jamie Curtis, **GUILTY**.

	Yes	No
Question 1	X	
Question 2	X	

If you answered no to both questions, you *should* find the defendant, Jamie Curtis, **NOT GUILTY**.

	Yes	No
Question 1		X
Question 2		X

If you answered yes to question 1 and no to question 2, you *should* find the defendant, Jamie Curtis, **NOT GUILTY**.

	Yes	No
Question 1	X	
Question 2		X

If you answered no to question 1 and yes to question 2, you *should* find the defendant, Jamie Curtis, **NOT GUILTY**.

	Yes	No
Question 1		X
Question 2	X	

LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Search and Seizure

Lesson 5

Objectives
Students will:

- Analyze two case studies and apply the law.
- Formulate arguments for or against a search.
- Evaluate arguments and decide which is more persuasive.

Materials
Copies of handouts:

- The Band's Trip
- The Rock Concert

Time Required
2 to 3 class periods—depending on whether teachers do one or both case studies.

Procedures for Case Study 1

■ **Pass out the Case Study**, The Band's Trip to Canada [based on *Kuehn v. Renton School District*, 103 Wash. 2d 594 (1985)]. Ask the class to read the facts. (You may want to have students read aloud.) Review the facts, listing important facts on the board, as students report them.

■ **Review the law that applies**, making sure everyone understands the law. You may wish to review the law by breaking it down, and reminding students of the questions in the fourth amendment analysis in the previous lesson:

- Was this a search? (Even though the search of Adam's bag did not actually take place, the requirement of the search prevented him from going on the trip, so for purposes of the case, there was a search.)
- Was the government involved? (This will be a point of argument—whether the search by parent chaperones was government action. The court ruled they were agents acting on behalf of the school.)
- Was there a reasonable belief that a school rule or crime was being violated?
- Was the search reasonable? Factors include the child's age, history, school record, seriousness of the problem, necessity to conduct the search without delay, and reliability of the information used to justify the search.

■ **Tell students** they will all have an opportunity to be either a lawyer to argue the case or a judge to decide the case. Have students count off by 3's. Tell all 1's they will be attorneys for Andy Kuehn, the student. Number 2's will be attorneys for the school district. Number 3's will be judges. Have 1's gather in one corner of the room, 2's in another, 3's in another. If your class is large, make two groups of 1's, two groups of 2's etc. so that the groups are no more than 5 students each.

■ **Tell the attorneys** for Adam to come up with arguments for why the search is not legal. Attorneys for the school district will come up with arguments for why they should be able to search the bags. Judges should review the facts and the law, and come up with at least one question that relates to the facts, one question that relates to how the law applies to the facts and one question about the policy implications of any decision they make.

■ **Give students** 20 minutes to work. Then reconfigure the groups, so that a number 1, 2, and 3 form a new group. (One easy way to do this is to have all 1's line up, 2's line up, and 3's line up, and take one student from each line.)

■ **Once students** are in triads, give them 10 minutes to make arguments. Tell them the lawyer for Andy should go first, and has no more than 4 minutes, then the lawyer for the school district, who has no more than 4 minutes. The lawyer for Andy can then have "the last word"—not more than 1 minute. The judge may interrupt the lawyers to ask questions. Then the judge should decide which side he or she rules in favor of, but wait to announce their decision to the small group.

■ **After the arguments**, have all judges come to the front of the room, and announce how they decided and why. Judges should also report the best argument they heard from each side.

■ **After all judges** have announced their decision, tell them that the Washington Supreme Court decided that the search was illegal. Excerpts from the decision follow:

- To meet the reasonable belief standard, it is necessary for the school officials to have some basis for believing that drugs or alcohol would be found in the luggage of each student searched. These officials did not believe they would find anything.
- In any sufficiently large group, there is a statistical probability that someone will have contraband in their possession. The fourth amendment demands more than a generalized probability; it requires that the suspicion be particularized with respect to each individual searched. There was no basis whatsoever to believe that Adam or any of the students had prohibited items in their luggage. The reasonable belief standard was not met. It makes no difference who conducted the search, since they were acting under authority of the state.
- Neither the voluntary nature of the activity nor the preannouncement of the search, standing alone, make the search constitutional. Participation in the wind ensemble trip while voluntary was not a private outing. It was an authorized school activity, in which members were expected unless they could not financially afford to do so. The mere announcement that a constitutional right must be waived in order to participate in the school activity cannot make the search reasonable.
- We are not unmindful nor unsympathetic to the great responsibility by the band director and parent chaperones in a foreign country. Nevertheless, an

important consideration is the availability of less burdensome options. The school might have required parents of each student to examine their own luggage and vouch for its contents. The school might have impressed upon students the consequences of a border search when contraband is found. Stern disciplinary measures might have been announced with a signed acknowledgment required from each participant and parents.

- The suggestions that a parental search is less intrusive than search by border guards is faulty. The possibility of a search at the border is remote. A search by a border guard is anonymous. A border guard searches pursuant to legal authority. A school's pre-trip search does not make the probability of a subsequent border search more or less likely. The general search is anathema to the fourth amendment and, except for the most compelling situations, should not be countenanced.

Procedures for Case Study 2

■ **Pass out** the Rock Concert Case Study. Tell students that this case was one in which the court was asked to create another exception to the search warrant requirement. Have students read the facts. Review the facts with the class, and list important ones on the board.

■ **Ask students** to read the two opinions and decide which opinion they agree with. Poll students as to which opinion they agree with. Break students into groups of five based on their agreement with Opinion One and on their agreement with Opinion Two. (Or arbitrarily divide students into groups.) Have students identify each argument in their opinion, and then rank the arguments for their side from strongest to weakest. Invite them to add additional arguments not made in the Opinion. Students should then debate the case in class, by allowing each group to give one argument, listing them on the board in two columns as groups pose them.

■ **After all arguments** have been discussed, poll students again to see if anyone has changed their mind. Then inform students that in *Jacobsen v. Seattle* [98 Wash. 2d 668 (1983)] the Washington Supreme Court ruled that the search was illegal. Opinion 2 is the court's opinion. The Court noted that the City had not argued that these defendants had consented to the search so they did not rule on the issue of consent.

■ **Point out** that the writers of the Bill of Rights never went to a rock or heavy metal concert. However, the broad ban on unreasonable searches adopted in 1791 is actively being used today to curb police practices.

Extension

Assign students to write their own opinion in either the band search case or the rock concert case. Alternatively, they may write a letter to the resource person if you had one come to class, expressing their opinion about either case. If no resource person was used, the letter could be addressed to you, the teacher, or other classmates. Remind students to include the facts to support their opinions.

The Band's Trip to Canada: Searching for Booze

Hazen High School offered the Wind Ensemble as an accredited, graded course. In addition to required class participation, the Ensemble each year visited different locations to perform concerts. The concert trips were not required, and if students could not afford to participate, their grades were not affected. Participation required signed parent permission slips.

Adam Kuehn was a member of the Ensemble. During his senior year, the Ensemble planned a concert trip to Vancouver, B.C. As a condition of participation, parent chaperones were to search all the luggage prior to leaving. This decision to search was inspired by an event two years before on the Ensemble's trip to Oregon, when two students were caught with liquor in their hotel rooms. This pre-departure search had been done the year before. The music director, student band council, parent booster club, and the school administration were united in support of the search policy.

Adam objected to the luggage search, as did his parents. Despite negotiations, the school refused to abandon the policy or exempt Adam. The principal issued a letter stating that the luggage check was a condition of participation in the concert trip and that students had the option of not participating.

Adam arrived at the luggage check with his suitcase locked and a note from his mother stating that she had inspected his luggage, that it contained nothing illegal, and that Adam wanted no one but customs officials to search his luggage. Adam was not allowed to go on the trip.

Adam and his parents filed a lawsuit against the school district, claiming that the search violated the fourth amendment.

The applicable law: Searches by school officials may be conducted when there is reasonable belief or suspicion that a school rule or crime is violated. School officials may search students when the searches are reasonable, taking into account the child's age, history, and school record, the prevalence and seriousness of the problem in the school to which the search is directed, the necessity to make the search without delay and the probative value and reliability of the information used as a justification for the search.

1. What did Adam and his parents claim in their lawsuit?

2. Who are the defendants? Why did they want to conduct a search?

3. What happens if Adam is successful?

4. Was the search policy a violation of the fourth amendment of the U.S. Constitution? Make arguments for or against the search.

Rock Concert Case Study

At various rock and heavy metal concerts held at the city auditorium, there have been frequent violations of the law, including concert-goers throwing hard and dangerous objects. During one concert, a cherry bomb was thrown and exploded near a teenager's eye. She required treatment at the emergency room of a local hospital.

Four persons coming to a rock concert were searched as they entered. The police officers physically searched the four. The officers took away heart medicine in an unmarked pill box from one person, removed an unopened pack of cigarettes from a purse, opened a backpack, and inspected individual cigarettes.

The four persons who were searched sued the city, claiming that the searches without warrants and without probable cause violated their fourth amendment rights.

Directions: Read each of the following two opinions and decide which one you personally agree with and why. Use the rules about search and seizure learned earlier. In small groups, you will then work to rank your arguments from strongest to weakest that support your opinion. You may add additional arguments that do not appear in the opinion.

Opinion One

These concert searches of everyone are proper. The fourth amendment makes it illegal to conduct unreasonable searches. People attending rock concerts expect to be able to view the performance without being injured by flying firecrackers or beer bottles. In fact, videos taken of the police searching concert goers shows that most are happy to cooperate with the search.

Also, the presence of alcohol and drugs at concerts results in security and serious health problems. The police take and destroy any alcohol, drugs, or other items seized and only refer for criminal prosecution those whom police believe intend to sell drugs.

No one is forced to go to the concerts, and the city does not have to allow concerts on its property. The city can also require that people be admitted only if they consent to a search.

These searches do not go very far into a person's privacy—for example, no one has to undress. Police are quite efficient in the way that they take the illegal items. These searches are like the searches allowed at airports and courthouses. We therefore rule that they are lawful.

Opinion Two

The city has shown that illegal drugs and flying objects are a problem at rock and heavy metal concerts. However, the U.S. Constitution makes it clear that searches must be reasonable. Searches without warrants are unreasonable unless the search can be justified by one of the exceptions to the warrant requirement. None of these exceptions applies here.

The police ask us to create a new exception, like the exception for courtroom and airport searches. This we refuse to do. We allow courtroom and airport searches because of the possibility of bombings and other violence that could cause death or serious injury to a large number of persons. Airport searches only involve metal detectors and courtroom searches only involve a brief stop and visual examination of carried items. No one is touched during these searches. Here at the concerts, the police conducted pat-down searches to prevent much less serious injuries and we therefore rule that they are unconstitutional.

LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Search and Seizure

Lesson 6

Objectives

Students will:

- Review the law of search and seizure by playing a game.
- Compete for points, both individually and cooperatively.

Materials

Question Panel Scoreboard (on board or overhead)

Time Required

1 class period

Procedures

■ **Divide the class** by rows into teams, and ask each team to select a Captain. Draw the following chart or panel on the board or have a prepared overhead transparency with the four topic areas and the point values underneath. Also put a score sheet on the board, by writing Team A, Team B, etc. for each team.

PROBABLE CAUSE	FOURTH AMENDMENT	WARRANTS	HODGE PODGE
10	10	10	10
20	20	20	20
30	30	30	30
40	40	40	40
50	50	50	50

Explain that this game is based on the TV game of Jeopardy but is not exactly the same. First of all, students will score points in teams (not as individuals) by correctly answering questions (rather than making up questions to answers provided).

Some lottery arrangement will determine which team gets to begin.

Each team will send the first person in the row to the board. The starting team has the right to select any of the topic areas for any point value, e.g., Probable Cause for 50. The 10-point questions are easiest and the 50-point questions the hardest. The team has 30 seconds to select a topic and point value. Once the team has made its selection, the instructor will read the question from the following list which is matched to the topic and point value.

At this point the first member of each team is standing at the board. The first person to write out the answer completely on the board gets the points. The question does not have to be answered by the team that selected the question. The teacher will be the judge of who wrote the answer first. Only complete, legible answers will be counted. If there is a tie, both teams get the points.

The student at the board may walk back to consult any written materials and with any members of their team, if they do not know the answer.

The team that is correct receives the point value put under their team's name.

Alternative: Rather than sending students to the board to write, you can have each team send one person to a table at the front, and pass out index cards to the representative from each team. Read the question, and allow 10 to 15 seconds for students to write their answers on the cards. Then have them show what they wrote, and give points for all correct answers.

If the question remains unanswered the instructor provides the answer.

Each team will then send the next person in the row to the board or table. The team correctly answering the prior question selects the next topic area at a particular point value. If the prior question went unanswered or was answered incorrectly, the team picking the prior question selects again.

As each point value under a topic has been asked, the instructor erases that point value from the board (or puts an "X" through the item on the transparency).

During the course of the game, a selection of a question may result in the "Daily Double Question." Only the team selecting what turns out to be the daily double question has the right to answer the question. The team may consult in deciding on the answer. If successful they get double the point value. If incorrect, they lose the double point value.

At the end of all the squares of point values, the instructor totals each team's score (alternatively, at the end of 40 minutes). At this point each team decides how much it wishes to risk in answering the Final Jeopardy Question. Students may risk zero to all of their points. If they answer the question correctly they earn the amount risked, if they are wrong, they lose the amount risked.

Students write down on a piece of paper the amount risked with the name of their team and hand it to the instructor. The instructor then asks all teams the Final Jeopardy Question. The teams have 30 seconds to answer in writing. Their final answer is placed in writing with the captain. Each team captain reports from the paper what the team's answer is, and the instructor reveals the point value at risk.

The winning team is the team with the highest point total.

If an award is available, it would be presented now.

Extension

(Either before or after the Jeopardy game.) Have students write Poems for Two Voices about search and seizure, presenting two points of view. (The Poems for Two Voices strategy is explained in the Japanese Internment unit, Lesson 1, p. 115 and the Salmon Summit unit, Lesson 5, pp. 301-303.) Have students present their poetry in class the next day as a culminating activity. You may want to publish the poems for students to take home and share with their families.

Jeopardy Game

PROBABLE CAUSE	FOURTH AMENDMENT	WARRANTS	HODGE PODGE
10	10	10	10
20	20	20	20
30	30	30	30
40	40	40	40
50	50	50	50

Questions and Answers for Jeopardy Game

PROBABLE CAUSE

- **Probable Cause 10 points**—True or False. Suspicion is defined as the amount of evidence that would lead a reasonable person to believe that items searched for are connected with criminal activity and will be found in the place to be searched.

  False.

- **Probable Cause 20 points**—If a defendant denies that probable cause to search existed at the time of the search, what person will make the decision whether or not there was probable cause?

  Judge (or magistrate).

- **Probable Cause 30 points**—True or False. Probable cause requires more information than reasonable belief or reasonable suspicion.

  True.

- **Probable Cause 40 points**—True or False. A school administrator needs probable cause to search an individual student's locker.

  False.

- **Probable Cause 50 points**—What is the name of the rule that keeps out evidence if police search someone without probable cause?

  Exclusionary rule.

FOURTH AMENDMENT

- **Fourth Amendment 10 points**—True or False. A search is a prying into a hidden place.

  True.

- **Fourth Amendment 20 points**—Fill in the blank: The fourth amendment bans searches and seizures that are

  ________________.

  Unreasonable.

- **Fourth Amendment 30 points**—Fill in the blank: The Fourth Amendment bans unreasonable searches by the government of areas that fall within a legitimate expectation of

  ____________________.

  Privacy.

- **Fourth Amendment 40 points**—Jane's former boyfriend breaks into her apartment and looks through her desk for love letters. Instead he finds drugs which he turns over to the police. Is there a 4th amendment violation? Why or why not?

  No, there was no government action (unless boyfriend was acting as an agent for the government).

- **Fourth Amendment 50 points**—Explain why the 4th amendment protection against unreasonable searches and seizures does not apply to a search of your carry-on bag at the airport.

  Courts have ruled that safety concerns at airports justify searches of passengers' carry-on bags, and metal detector searches of passengers.

WARRANTS

- **Warrants 10 points**—True or False. A warrant is a court order.

  True.

- **Warrants 20 points**—Warrants must be issued by whom?

  Judge or magistrate.

- **Warrants 30 points**—True or False. In order to obtain a search warrant, a magistrate must determine that there is probable cause to believe that items related to criminal activity will be found on the person or in the place to be searched.

  True.

- **Warrants 40 points**—What happens if evidence is seized illegally?

  Under the exclusionary rule, the evidence cannot be used to convict the accused at trial.

- **Warrants 50 points**—DAILY DOUBLE QUESTION—**If a search warrant authorizes a search of a specific house for stolen televisions, can the police look into desk drawers as part of this search? Explain your answer.**

  [Special instructions for the daily double question. Only the team that selected this question has a chance to answer and to earn twice the points, i.e. 100 points. Students have 30 seconds to answer.]

  No, it would be unreasonable for them to look in desk drawers or other small places where a television could not possibly be hidden.

HODGEPODGE

- **Hodgepodge 10 points**—Fill in the blank: The constitutional amendment that regulates search and seizure is the

  ________ ________.

  Fourth amendment.

- **Hodgepodge 20 points**—Search and seizure law balances two opposite interests. What are they?

  Individual right to privacy and government enforcement of laws, or public safety.

- **Hodgepodge 30 points**—When may a school administrator search all school lockers?

  Any time.

- **Hodgepodge 40 points**—True or False. Taking a blood sample is not a search.

  False. Since one's blood type or content is not immediately perceivable, it is a search.

- **Hodgepodge 50 points**—Fill in the blank: To search the book bag of a student in a public school, the school administrator must have ____________ ____________ that the search will turn up evidence that the student committed a crime or violated a school rule.

  Reasonable suspicion or reasonable grounds.

FINAL JEOPARDY QUESTION

When all 20 squares have been used up (alternatively when 40 minutes has passed), the teams are then ready for the final jeopardy question. Each team, knowing its point total, is free to bet as many or as few points as they wish. All teams will be eligible to play.

- What does "curtilage" mean? What is the significance of this?

  Curtilage refers to the area around a residence that is regularly used in daily life, including buildings close to a house that are regularly used. The curtilage is considered to be an area where one has a "legitimate expectation of privacy."

Alternative question if you did not cover "curtilage" with your class:

- When can a school official require a student to undress to find hidden contraband?

  Never.

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Immigration

Introduction

Description

This unit explores past and present attitudes and policies regarding immigrants and immigration. An historical perspective is visited as the students read both factual data and poetry reflecting diverse points of view. While highly integrated with language arts skills, this unit provides students an opportunity to examine issues and aspects of current immigration policy by studying a U.S. Supreme Court case. Optional extension lessons include drafting legislation and a look into the future at a hypothetical constitutional amendment to create two classes of citizens.

Use of Outside Resource Persons

Inviting parents, family members or others who have immigrated will enrich the students' appreciation for the immigrant experience. Inviting lawyers, legislators, or legislative aides into the class will enhance students' understanding of the skills needed to draft legislative policy for the extension lesson.

Time Required

6 to 9 class periods.

Prior to First Lesson

You may wish to post a world map and have students place colored stick pins on their country of origin, with string to the region of the U.S. where they or their ancestors first settled. This display can remain up during the entire unit.

Social Studies Outcomes

Students will:

- Become familiar with the history of immigration.
- Identify and define vocabulary words associated with immigration, such as alien, undocumented, etc.
- Develop time-lines to explain shifts in national and state immigration policy over time.
- Identify issues related to current immigration policy.
- Evaluate and discuss their own attitudes toward immigration.
- Analyze, prepare and evaluate legal arguments.
- Propose and draft legislation regarding current immigration policies. (Optional extension lesson.)

Reading and Language Arts Outcomes

Students will:

- Read and analyze poetry written about the immigrant experience.
- Write journals reflecting diverse perspectives of the immigrant experience.

- Examine and analyze newspaper articles to identify issues related to current immigration policies. (Optional extension lesson.)
- Read a Supreme Court case, analyze, and discuss it.
- Develop arguments for a moot court.
- Read briefs presenting arguments for a moot court.

Higher Order Thinking Skills Outcomes
Students will:

- Examine opinions and attitudes regarding U.S. immigration policy.
- Create believable, historically accurate accounts of the immigrant experience.
- Hypothesize attitudes and values about immigration during different periods in history after reading poetry.
- Select and develop an issue related to current immigration policy that they think should be changed or make arguments to support one aspect of present immigration policy. (Optional extension lesson.)
- Write persuasive letters to a senator or representative outlining an issue of concern regarding current immigration policy and suggesting a change or support for present immigration policy. (Optional extension lesson.)
- Develop arguments for a moot court based on a Supreme Court case.

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Tripp, Eleanor B. *To America*. New York: Harcourt Brace & World. 1969. Discusses the various causes, such as famine, poverty, slavery, and religious and political persecution, which brought immigrants to the New World and describes where and how the major national and racial groups settled and their influence on the development of their new country. 214 pp.

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VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
MUSICAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Immigration

Lesson 1

Objectives

Students will:

- Read poetry to gain perspective about historical waves of immigration.
- Review the history of U.S. immigration policy through a prototype chronology of California's immigration history.
- Develop a time-line of immigration waves and policies, and hypothesize attitudes regarding immigration at three benchmarks: Early Wave (prior to 1830), Great Wave (1830-1930), New Wave (1930-present).

Materials

Copies of:

- Selected poetry about immigration from list below, or other poetry that is appropriate.
- Handout "Chronology: Coming to America" (1 per student)

Time Required

2 to 3 class periods.

Before First Class

Either make copies of selected poems for students, or assign reading as homework before the first class, using the list of books below, or other sources. These books are available in most public libraries.

Divide the class into three groups, and assign one group to read poems about the Early Wave (prior to 1830), one group to read about the Great Wave (1830-1930), and one group to read about the New Wave (1930-present).

Prior to teaching this unit teachers may also wish to read the article from *Newsweek* magazine, "America: Still a Melting Pot?," included in Lesson 5, for an overview of past and present attitudes about immigration. This article could also be assigned to more advanced students as background reading.

- **Early Wave**:
  - Philip Freneau. *The Norton Anthology of American Literature*. Third Edition, Volume 1. "On the Emigration to America and Peopling the Western Country (1785)." New York: W.W. Norton and Company. 1979.
  - Nancy Byrd Turner. *America Forever New*. "Immigrants." Compiled by Sara & John E. Brewton. New York: Crowell. 1968.
  - Frederick Woods. *The Oxford Book of English Traditional Verse*. "William and Phyllis." Oxford University Press. 1983.
- **Great Wave**:
  - Langston Hughes. "Harlem." *America in Poetry*. Edited by Charles

Sullivan. New York: H.N. Abrams. 1988.

  - Alexander McLachlan. *The New Oxford Book of Canadian Verse in English*, from "The Emigrant (1861)." Oxford University Press. 1982.
  - Adrienne Rich. "Prospective Immigrants Please Note." *America in Poetry*. Edited by Charles Sullivan. New York: H.N. Abrams. 1988.

- **New Wave**:
  - Chitra Banerjee Divakaruni. *The Open Boat: Poems from Asian America*, "Yuba City School." Anchor Books. New York. 1993.
  - Gregory Djanikian. *The Music of What Happens: Poems That Tell Stories*, "How I Learned English." Orchard Books, New York. 1988.
  - Edward Field. *Preferences: 51 American Poets Choose Poems From Their Own Work and From the Past*. "My Polish Grandmother." The Viking Press. New York. 1974.
  - Barbara Kingsolver. *Another America, Otra America*. "What the Janitor Overheard in the Elevator." Seal Press. 1992.

Procedures

■ **Ask students** what we mean by "immigration." (Immigration is the act of coming to a country of which one is not a native, with the intent of settling there.) Draw from students their prior knowledge and experiences with immigration. Have any students immigrated themselves? Query about what attitudes they have noticed about immigration, by asking questions such as: "What are some things you know about how Americans feel about immigration and immigrants-both past and present?"

■ **Ask students** to select one or two poems from the period they read poetry about (see Before First Class). Have students read the poems aloud. After reading a poem, ask students what attitudes and values about immigration they detect. Probe for theories about the similarities and differences they see among different immigrant groups and periods of immigration. Ask: "What makes one immigrant experience different from another?"

■ **Brainstorm reasons** people immigrate. (Economic opportunity, join family members, religious freedom, refuge from persecution, etc.) Does why and how someone leaves their home country affect how easy it is to start a new life in America?

Discuss how the motivation for coming to this country affects the experience. Point out that those who came for economic opportunity or to join family members (sometimes called "voluntary" immigrants) will often have an easier time assimilating than those who came as refugees, to escape persecution in their home country or as slaves ("involuntary" immigrants).

■ **Distribute the handout** "Chronology: Coming to America." Ask the students to work in pairs to develop a time-line of immigration history and policy in California. Give them at least half a class period to work on this. (Explain that Washington's history of immigration is somewhat similar to California's.)

■ **Ask the students** to identify patterns and inconsistencies they notice in immigration policy as they prepare their timelines. (Most students will notice that people of color have been subject to more restrictive immigration policies. They may also notice that while one group of immigrants is being restricted in some way, another group will be welcomed. Finally students may notice that overall economic conditions play an important part in how immigration policy is stated.) Explore these and other patterns or inconsistencies identified by the students.

Due to California's history, the Early Wave is not included in this chronology. You may want to ask the students to investigate immigration numbers and policy during the Early Wave and report back to the class. The U.S. Statistical Yearbook contains data on immigration back to 1820.

■ **Divide students** into smaller groups, representing the Early Wave, the Great Wave and the New Wave (no more than 5 students in each group). Also assign 4-6 students to be journalists, who are preparing a story about each period of immigration. (They could also use the talk show format.) The journalists should work in a group to come up with questions they want to ask the immigrants from each period.

■ **Ask the students** representing each Wave to develop and write up statements from at least two hypothetical citizens, and to prepare to be interviewed by a journalist. The statements should characterize prevailing attitudes during the time they are assigned to:

- **Early Wave** — A resident who was born in the United States and a newly landed immigrant.
- **Great Wave** — A resident who was born in the United States and a new immigrant.
- **New Wave** — A resident who was born in the United States and a new immigrant.

■ **Ask two student journalists** to come to the front of the room and interview representatives from the Early Wave regarding immigration and the immigrant experience. Encourage extemporaneous, creative discourse while keeping in character. Then repeat the exercise with the other journalists and representatives from the Great Wave and the New Wave.

■ **After each interview**, debrief by asking what "facts" students learned as a result of the interview. What attitudes were reflected? Was the interview realistic?

Extensions

- Have students read literature about the immigrant experience. Also the movie "Becoming American," available from the Seattle Public Library, depicts a family of Hmong refugees settling in Seattle and is an excellent resource.
- Play the song "America" from the movie *West Side Story*, available on video. As the actors sing the song, ask students to listen carefully and write down what the men are saying in response to the women's refrain "I want to be in America." Then discuss whether these feelings are common to other immigrant groups.

Chronology: Coming to America

(From the *Los Angeles Times*, November 14, 1993.)

California and the United States have a long and sometimes schizophrenic history of immigration politics.

1840s Large-scale immigration to the U.S. begins, spurred by revolutions and upheavals in Europe, such as the potato famine in Ireland. Immigration is unrestricted.

1850 Soon after California statehood, Chinese begin arriving, drawn by the demand for cheap labor by the railroads and mines. California levies a tax on foreign miners.

1854 Chinese are prohibited from testifying in court against whites.

1855 State Legislature imposes at $50 "head tax" per Chinese immigrant. San Francisco passes "pigtail ordinance" requiring Chinese lawbreakers to cut their hair within one inch of the scalp.

1871 A Los Angeles mob, which includes prominent citizens, tortures and hangs 17 Chinese men.

1879 New state Constitution bars corporations from hiring Chinese and prohibits the employment of Chinese in any public works "except for punishment for crime."

1882 Congress enacts Chinese Exclusion Act prohibiting Chinese laborers from entering the country. The law also prohibits Chinese immigrants from becoming U.S. citizens. It is repealed in 1943.

1892 The Office of Immigration opens an inspection station at Ellis Island in New York Harbor.

1900s In the first great wave of immigration, the U.S. receives 8.8 million immigrants, including large numbers from Italy, Russia and Austria-Hungary.

Japanese begin arriving, recruited by the agricultural industry to make up for the loss of Chinese labor.

1906 California bars marriage between whites and "Mongolians." San Francisco school board sets off an international incident by segregating Japanese schoolchildren. Outcome is the 1907 Gentlemen's Agreement barring Japanese laborers.

1913 President Woodrow Wilson dispatches Secretary of State William Jennings Bryan to beg California Legislature not to pass anti-immigrant legislation.

1913 Noncitizen Japanese are barred from owning property or leasing farmland.

Mexican immigrants begin pouring into the state to meet demand for labor.

1921 Congress' Quota Act limits immigrants of given nationality to 3% of their numbers already in the United States. The law does not restrict immigration from the Western Hemisphere.

1924 Japanese immigration is effectively cut off. Quota is lowered to 2% of residents of each nationality. Border Patrol is created.

1929 Race riots flare in Northern California against Filipino laborers.

1930 In height of Depression, deportation of Mexican laborers is widespread.

Approximately half a million Mexicans exit-many of them U.S.-born children.

1942 California agricultural industry persuades Congress to establish the "bracero" program, bringing in Mexican workers to offset labor shortages.

1954 Launching "Operation Wetback," INS agents arrest Latinos at their workplaces. More than 1 million Mexican immigrants, together with some U.S. citizens, are deported.

1964 Bracero program is terminated.

1965 Congress repeals national origins quota system. Preferences established for close relatives and refugees and certain job classifications.

1970s After the end of the Vietnam war, refugees from Vietnam, Cambodia and Laos begin arriving in the United States, particularly in California.

1980s Los Angeles becomes "new Ellis Island" with waves of Central Americans, Iranians, Armenians and others from around the world fleeing revolution, violence and poverty.

1980 Congress approves Refugee Act to permit immigration by persons who fear "persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

1986 President Ronald Reagan signs Immigration Reform and Control Act, granting amnesty to 3 million illegal immigrants in U.S. since 1982. The law also establishes sanctions against employers who hire illegal immigrants.

1990 National quota for legal immigrants is raised to roughly 700,000 per year.

1993 President Clinton urges tightening of asylum provisions. California Gov. Pete Wilson proposes measures to curb illegal immigration, including denying citizenship to children of illegal immigrants.

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Immigration

Lesson 2

Objectives

Students will:

- Learn immigration vocabulary words.
- Examine their opinions and attitudes regarding U.S. immigration policy.
- Develop arguments to support their opinions and respond to arguments from other students.

Materials

Copies of handout:

- Immigration Opinion Poll

Time Required

1 class period.

Procedures

■ **First, review** some of the immigration vocabulary words. Ask what governmental entity is in charge of immigration. The federal government handles all immigration matters. The Immigration and Naturalization Service (INS), an agency within the executive branch, is the agency most involved in immigration.

Ask what "alien" means. "Alien" is the term used to describe any person who is not a citizen of the United States. Immigrants who have not attained citizenship status are called aliens. Point out the connotations associated with the word "alien." (From outer space, etc.)

Immigration laws create two types of aliens:

1. "Nonimmigrant" or "nonresident" status is assigned to those persons admitted to the U.S. for a limited time, such as tourists, students, diplomats, and crews of foreign ships.
2. "Immigrant" or "resident alien" status is assigned to those persons desiring permanent residence in this country. Resident alien status is more difficult to obtain. Resident aliens are assigned an immigrant visa, called a "green card," may live anywhere in the U.S., and are protected by all Constitutional provisions that apply to "persons" as opposed to "citizens." (For example, the 14th amendment applies to "all persons," but the 15th and 24th amendments apply only to "citizens" when referring to the right to vote.) Resident aliens may participate in any legal activities within the U.S. They may apply for citizenship after 5 years of residence in the U.S., or 3 years if they are married to a U.S. citizen.

There is another type of alien, the undocumented alien, who has entered the country without "checking in" at the border, or who has remained longer than their visa allowed. Undocumented or illegal aliens are subject to deportation, unless they can prove that they would be subject to persecution if returned to their country.

■ **Tell students** you are going to take a survey of their opinions about immigration. Pass out the Immigration Opinion Poll to students, and ask them to complete it individually. Remind them that you are asking for their opinions, not what they think the law is, or what current government policy is.

■ **Go over each question**, and tell students the results of the national survey, when that information is provided. You may ask students to compile their class profile in percentages, and compare with the national survey percentages.

Then discuss the policy issues raised, and the current state of the law, if applicable. Information about each statement follows:

1. Immigration has been a good thing for the U.S. in the past.

   According to a nationwide poll conducted by *Newsweek* in July 1993, 50% of those surveyed said immigration has been a good thing in the past. 31% said it has been bad. (Assume that others were undecided.)

2. Immigration is a good thing for our country today.

   According to the same survey, only 29% said that immigration is good for our country today. 60% said it is bad.

3. Immigrants are taking jobs away from Americans.

   62% of those surveyed agreed that immigrants take the jobs of U.S. workers. This feeling that immigrants are taking jobs away from citizens is one reason given for discrimination against immigrants.

Tell students that discrimination against immigrants is a part of our history, and until fairly recently was allowed by law.

Depending on the level of your class, you may wish to review the history of major U.S. Supreme Court cases addressing the issue of discrimination against aliens, which is outlined below:

The U.S. Supreme Court first held that aliens, or noncitizens, were entitled to equal protection under the 14th amendment in 1885. In *Yick Wo v. Hopkins*, 118 U.S. 356 (1885), a San Francisco laundry licensing ordinance was used to discriminate against Chinese who owned laundries, by denying licenses to the Chinese, while granting licenses to white laundry owners. The Supreme Court held that the law was being applied in a way that discriminated against the Chinese, and thus violated the Equal Protection Clause of the fourteenth amendment.

Still, laws continued to be passed by the states that discriminated against aliens, particularly in the area of employment, and many of these laws were upheld by the courts, under the rationale that a state has the authority to limit the use of its public resources and funds to its citizens. Examples of some of the laws upheld are an Ohio law prohibiting aliens from operating pool halls, a Pennsylvania law prohibiting aliens from being licensed as public accountants, a New York law denying aliens the right to be awarded public works contracts, and a Maryland law prohibiting aliens from selling liquor. Aliens have also been denied the right to cut hair, sell soft drinks, handle animals or corpses, or peddle goods—because of "a tendency to cheat customers."

Finally, in the 1940s the U.S. Supreme Court began to strike down some of these laws, beginning with a California law that prohibited aliens from obtaining a fishing license. It was not until 1971, however, that the Supreme Court severely limited the right of states to treat aliens differently than citizens.

In *Graham v. Richardson*, 403 U.S. 369 (1971), the U.S. Supreme Court held that aliens could not be denied welfare benefits simply on the basis that they were aliens. In *Graham*, for the first time, the Court classified aliens as a "suspect class." This classification means that laws discriminating against aliens must be examined under the "strict scrutiny" test, which is the strictest test that can be applied under the fourteenth amendment equal protection analysis. Under the strict scrutiny test, a law discriminating against aliens is unconstitutional *unless* the state can show that it serves a compelling, or very important purpose or need.

Other "suspect classes" are race and national origin. (The strict scrutiny test is also used if a law interferes with fundamental rights in the Constitution, such as freedom of speech or religion.)

Since *Graham*, the U.S. Supreme Court has struck down a Connecticut law requiring that an applicant for the Bar (to practice law in a state) had to be a U.S. citizen, and a New York law limiting eligibility for college tuition assistance to citizens. The Court has, however, defined an exception to the strict scrutiny test when the law excludes aliens from a political type job (the "political function" exception). In other words, the Court has made an exception that allows aliens to be discriminated against in certain types of occupations. Under this exception, the Court has upheld laws prohibiting aliens from serving as police or "peace" officers, and a New York law that excluded aliens who did not intend to become citizens from being certified as public school teachers.

4. The United States should be more lenient toward those people coming here because of political oppression than those people coming here for economic opportunity.

In the *Newsweek* survey, 53% felt that the U.S. should continue to be more lenient toward those coming here because of political oppression.

Those coming here because of political oppression are called "refugees." A refugee is a special category of "forced" immigrant—someone who is subject to persecution in their homeland. "Persecution" means to oppress, threaten or mistreat someone because of their race, religion or beliefs. Refugees are entitled to special protections, both under international and U.S. law.

Additional information for th

teachers: The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 states that "Everyone has the right to seek and enjoy in other countries asylum from persecution." In 1968, the U.S. became a party to an international treaty, the United Nations Protocol Relating to the Status of Refugees. That treaty prohibits governments from forcibly returning refugees to countries where their life or freedom is at risk because of their race, religion, political opinions or associations, or nationality. Governments may, however, transport the refugee to a country other than their home country.

Throughout its history, the U.S. has accepted those who would face persecution if deported to their home country. Congress fully recognized an obligation to admit refugees from other countries when it passed the Refugee Act of 1980. That law defines "refugee" as any person leaving his or her own country because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

Some commentators criticize the U.S. Refugee Act and U.N. definition of refugee because it does not provide protection for those who are fleeing war or civil strife in their home country, especially if the person is "neutral," and not involved politically, and thus not subject to political persecution.

5. Only English should be used in public schools, government offices, government documents, and public signs.

   51% of those surveyed said they believed that only English should be used in schools and official business. 47% said they supported the use of other languages in some areas.

6. Children born in the United States to undocumented (illegal) aliens should not automatically be U.S. citizens.

   This question was not in the national survey. California Governor Pete Wilson has called to change the law making children of undocumented aliens automatic citizens. This would require a constitutional amendment. The fourteenth amendment now states: "All persons born or naturalized in the United States ... are citizens of the United States and of the state wherein they reside."

7. In order to detect undocumented (illegal) aliens, everyone in the U.S. should be required to carry a national I.D. card.

   This idea has been proposed. Ask students for their reactions. Some think such a requirement would make the U.S. like a police state.

Extensions

- **Limited English Simulation**: In order to give students a taste of being in a country where they do not speak the language, invite a speaker to address the class in a foreign language that your students do not know. Tell the speaker to address the students in the other language for five to ten minutes, asking questions, demanding answers, and giving commands to students that they do not understand. Then stop, and brainstorm with students how they felt. List feelings on the board or overhead. Point out the parallels to non-English-speaking newcomers to this country.

- **Editorial/Cartoons**: Ask students to pick one of the opinion poll questions and write an editorial of less than 300 words about the issue. They should state their position, supporting it with facts and reasoned argument. Alternatively, students may draw a political cartoon, communicating their opinion about one of the issues in the poll.

Opinion Poll — Immigration

Directions: Write "A" for Agree, "D" for Disagree, or "U" for Undecided next to each of the following statements. There are no right or wrong answers, but you should be able to give a reason for your opinion.

____ 1. Immigration has been a good thing for the U.S. in the past.

____ 2. Immigration is a good thing for our country today.

____ 3. Immigrants are taking jobs away from Americans.

____ 4. The United States should be more lenient toward those people coming here because of political oppression than those people coming here for economic opportunity.

____ 5. Only English should be used in public schools, government offices, government documents, and public signs.

____ 6. Children born in the United States to undocumented (illegal) aliens should not automatically be U.S. citizens.

____ 7. In order to detect undocumented (illegal) aliens, everyone in the U.S. should be required to carry a national I.D. card.

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Immigration

Lesson 3

Objectives

Students will:

- Read and analyze facts.
- Read and analyze legal arguments.
- Prepare and make arguments in a moot court.
- Evaluate arguments.

Materials

Copies of handouts:

- The Law and Facts
- Petitioner's Brief
- Respondent's Brief
- Instructions for Attorneys
- Instructions for Justices
- Questions for Observers

Time Required

2 class periods.

Procedures

■ **Tell students** they are going to study a U.S. Supreme Court case, decided in 1982. The case is about education for the children of undocumented aliens. While the case is over a decade old, the issues involved are still being discussed.

■ **Pass out** a copy of the law and facts and ask students to read it. Check for understanding by asking the following questions:

- Why was the law passed?
- Who may attend the free public schools?
- Who cannot attend school?

■ **Ask for a show of hands** to indicate how many would find the law constitutional, how many unconstitutional. Do not discuss the case yet.

■ **Tell students** they will now prepare for and conduct a moot court argument to the U.S. Supreme Court on this case. Explain that when attorneys are preparing to argue a case before the U.S. Supreme Court, they submit written briefs to the Court ahead of time. The briefs contain arguments for why their side should win.

Pass out the briefs for both sides to all students. (Arguments in the briefs are taken from the majority and dissenting opinions in the actual case). Explain that the Respondent children are referred to as "John and Jane Doe" to protect their privacy. Give students time to review the briefs. Then, ask them to think about which side they agree with, and to prioritize the arguments listed in each brief, from strongest to weakest.

After students have reviewed the arguments, and prioritized them individually, ask them: What is the issue in this case? Put another way, what must the Court decide?

The issue is whether the Texas law excluding children of undocumented aliens from free public schools is constitutional. Or, does the law violate the equal protection clause of the fourteenth amendment?

■ **Assign 4 to 6 students** to be attorneys for the Texas school district (the Petitioners), and 4 to 6 students to be attorneys for the alien children (the Respondents). Divide the rest of the class into groups of 4 to 6 students to be Supreme Court Justices. (Alternatively, the class can be divided into three equal groups of "P's", "R's" and "J's"—Petitioners, Respondents, and Justices—so that students can argue in triads and everyone can be an attorney or a justice, arguing simultaneously.)

■ **Give the attorneys** the Attorney handout about appellate arguments. Explain that attorneys for the Texas school district (Petitioners) will be arguing *in favor* of the law, saying that it is constitutional, and that undocumented alien children should not be able to attend school in Texas for free. They should review their brief, and add any other arguments they can think of. Attorneys for the children (Respondents) will be arguing *against* the law, saying it is unconstitutional, using arguments from the brief, plus any additional ones they can think of. Give the Justices copies of the Justices' handout, and tell them to review the briefs and prepare questions.

■ **Allow the groups** to meet for the rest of the class period to prepare their arguments and questions for the next class. Attorneys should brainstorm as a group their best arguments and put them in order, from strongest to weakest. The Justices should prepare at least five questions as a group to ask the attorneys during oral argument.

■ **At the end of class**, tell attorney groups to select one person to make their argument to the Court (unless you have divided the class into "P's, R's and J's"). The teacher can either ask for volunteers or select 9 students to be Justices. Select one student to be timekeeper, and the Justices should select a Chief Justice to moderate. The remaining students will be observers.

■ **The next day**, tell those class members that do not have a role that they will be Observers. Give them a copy of the Observer form, which should be completed during the arguments.

■ **Arrange the class** so that the Justices are sitting in front of the room, with attorneys facing them. Allow up to five minutes for the Petitioner, plus two or three minutes for questions, then up to five minutes for the Respondent, with two or three minutes for questions from Justices. The Petitioner may have up to two minutes rebuttal time, if all five minutes were not used in the initial argument. (The Petitioner may want to reserve two minutes of time for the rebuttal in the beginning.)

■ **Then give the Justices** five minutes to confer, in the presence of the rest of the class. The Chief Justice should ask for a

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vote and then announce their decision, with supporting reasons. A majority of Justices decides the case.

■ **After the arguments**, debrief by asking the following questions, (from the Observers' form):

1. What were the strongest arguments presented by the attorneys for the school district? Can you think of any good arguments they did not make?
2. What were the strongest arguments presented by the attorneys for the children? Can you think of any good arguments they did not make?
3. What questions from Justices were helpful in understanding each side's argument? Were there other arguments you would have made? Were the effects of the decision considered?
4. Do you agree with the Justice's decision? Why or why not?

■ **After discussing** the observers' comments, and the decision of the Justices, tell students that the Supreme Court decided this case in 1982, and held that the law was unconstitutional. The Court relied on the arguments in the Respondents brief, especially that these children would be forever "second-class citizens" without an education. The vote was 5-4, however, and the Court has changed personnel in large part since 1982. The California initiative in the Extension Lesson below is in direct contradiction to this decision of the Supreme Court. Backers of the initiative are betting that the Court would rule differently today. The Court is supposed to follow its own precedent, but the members of the Court have changed since 1982, and the argument could be made that the facts are different, in that economic and immigration conditions are different today.

Extensions

- **Appellate Opinion**: Ask each student to write an appellate opinion deciding the case, based on how they personally would decide the case. Tell them to support their decision with both facts and legal arguments, and discuss any policy implications.
- **Initiative Activity**: In 1994, some California voters backed an initiative called "Save Our State." The proposed law would cut off all free social services to illegal aliens, including free education to children.

  Pass out copies of the Citizen's Initiative handout found at the end of this lesson. Hold a public meeting on the initiative. Read the initiative, and ask for a show of hands for who would support it, and who would oppose it. Divide students into two groups, of supporters and opponents. Subdivide the groups, so that no more than 5 students form a group. Ask them to prepare to participate in a public meeting about this initiative. Allow 20 minutes to prepare, and then 20 minutes for the debate. Either the teacher or a student should serve as moderator. At the end, ask if anyone has changed their mind, based on arguments made at the meeting? Take a final vote.

Note: In June 1994 the state of California sued the federal government seeking to recoup the $370 million annual cost of providing health services to illegal immigrants. California also sued the federal government in April 1994 to recover $2 billion for the cost of jailing felons who are illegal immigrants. A third suit may be filed, to recover $1.7 billion for the costs of education children of illegal immigrants.

- **Journals**: Ask students to write a journal entry from the perspective of one of the children seeking to attend public school in the U.S.
- **Poems**: Ask students to write Poems for Two Voices about this issue. (This strategy is described in the Salmon Summit unit, page 301-302.)

The Law and History of the Case

Concerned that high numbers of children of undocumented aliens were attending their state's schools, the Texas legislature passed the following law:

> Tex. Educ. Code 21.031. Only children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be permitted to attend the public free schools of the district in which he resides.

A lawsuit was filed on behalf of the illegal alien children. The lawsuit claimed that the law was unconstitutional because it violates the fourteenth amendment of the U.S. Constitution. The relevant part of the fourteenth amendment provides:

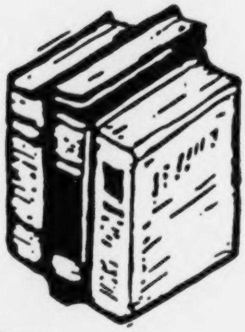
> No state shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Facts

Lawyers can make arguments based on the following facts:

- The increase in population caused by illegal immigrants from Mexico has created problems for the school district, partly due to the special educational needs of those students, such as English as a Second Language classes.
- The school district is financially strained by the large number of children of illegal immigrants.
- Illegal immigrants are not qualified to receive other government benefits such as food stamps, and welfare.
- The school law has the greatest impact on a small group of illegal alien families who have immigrated to the U.S. permanently, although illegally.
- Many undocumented alien children continue to live in the U.S. for years and some become citizens through marriage to a citizen.
- Without an education, the children, already disadvantaged because of poverty, lack of English-speaking ability, and racial prejudices, are likely to become permanently part of the lowest socioeconomic class.
- A large number of illegal aliens live in Texas. Their presence is largely tolerated, and their employment is even welcomed. They are often subject to abuse or exploitation.
- Evidence at the time of trial shows that illegal aliens underuse public services and contribute their labor and tax money to the local economy.

Brief of Tyler School District



The law that excludes undocumented alien children from attending the free public schools of this district is constitutional. The law does not prevent the children from attending school, only from attending school for free.

A state should not have to pay to educate children present illegally in the state because the federal government does not properly enforce our immigration laws. States have no power to enforce immigration laws and control the borders, or to deport aliens. Those powers belong to the federal government only. If Congress will not pass laws or allocate funds to properly patrol our borders, states should have the right to protect their budgets by passing laws like this one, to keep illegal immigrant children from attending our schools for free.

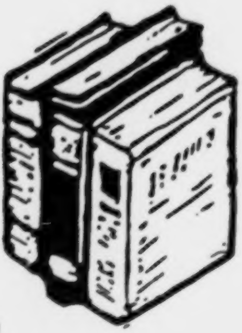
Persons who have entered this country illegally are not entitled to other benefits the state offers, such as welfare and food stamps. The right to an education is not a fundamental right. Since the aliens have no right to be here in the first place, the state and school district do not have to provide a free education for these children.

Providing a free education to children of undocumented aliens will only encourage more illegal immigration. This will burden the economy of the state. The school district must act to protect its financial security in the face of an increasing tide of illegal immigrants.

The undocumented alien children put a great burden on the school system because of their special needs.

Since many of these children will not remain in the U.S., they will not have the chance to put their education to productive use here.

Brief of John and Jane Doe, Undocumented Alien Children



The Texas law excluding undocumented alien children from receiving a free public education is unconstitutional. The law violates the fourteenth amendment of the U.S. Constitution because it unfairly discriminates against undocumented school-age children.

Public education is key to maintaining our basic institutions and democratic system of government. Education also provides the basic tools to make a productive living in our society. The inability to read and write will handicap a child every day of his or her life. No child can be expected to succeed in life without a basic education. Therefore education must be provided on equal terms.

The children of illegal aliens are not responsible for their presence here. It is unfair to use a parent's misconduct in coming here illegally to deprive the child of an education. No child is responsible for its birth. To punish a child for a status that he or she has no control over is unjust. Nor is it going to keep the parent from illegally entering this country.

Most undocumented aliens enter this country to look for work, not to get a free education for their children. This law will have no impact on the amount of illegal immigration. It will only punish innocent children.

Instructions for Attorneys — Appellate Arguments

Order of Arguments

- Petitioner — Up to 5 minutes, then 2-3 minutes for questions from judges.
- Respondent — Up to 5 minutes, then 2-3 minutes for questions from judges.
- Petitioner — Rebuttal, up to 2 minutes, if time remains from first 5 minutes.

In your small groups, review the brief for your side and identify what legal arguments you will present to the Supreme Court. Arguments should be no more than five minutes, then two to three minutes for questions. If time allows, up to two minutes of rebuttal argument by the Petitioner may be allowed, after the Respondent.

At least two attorneys must be used to present your argument. (Unless you are arguing in triads.)

As a group, write a clear, brief statement of your position in this case. Include the following:

- Cite at least two facts from the case to support your position.
- Explain how the facts support your position.
- Explain why your position is best for the parties in this case.
- Explain what impact a ruling in your favor will have on society.

Tips on Making an Oral Argument

1. Begin your argument by stating what your position is and quickly summarizing the basis for that position.
2. Legal conclusions are generally dependent on facts to support them, so include facts in making your arguments.
3. Don't worry about "legalese" in your argument. Figure out what your group wants to "win" in the case, what facts you feel support your goal, and argue accordingly.
4. Remember the time limitations. If you have many points you want to make, you may want to prioritize and emphasize in detail only the most important points. Tell the court your other points (perhaps listing them very quickly) have been covered in your written brief.

Instructions for Supreme Court Justices

When preparing to hear oral arguments from attorneys, Justices review the briefs (written arguments) submitted by the parties, and prepare questions for the attorneys. Review the briefs and the facts. Think about what facts you don't understand, and what questions you want answered to clarify the facts before you decide this very important case.

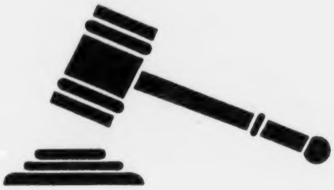
Also prepare questions about the policy implications of this case. What would be implications or results of a ruling for either side?

As a group, think of at least 5 questions to ask the attorneys during their arguments. Everyone should make a list of the questions, which will be turned in at the end of class.

During the arguments, feel free to interrupt if you want. That's what the Supreme Court Justices do.

After the attorneys have argued, you will have 5 minutes to confer about your decision. The Chief Justice will moderate, making sure that each Justice has an opportunity to speak. One way to assure this is to take a poll, allowing each person to speak in turn. You can then vote. The Chief Justice should announce the decision of the Court.

Questions for Observers



1. What were the strongest arguments presented by the attorneys for the school district? Can you think of any good arguments they did not make?

2. What were the strongest arguments presented by the attorneys for the children? Can you think of any good arguments they did not make?

3. What questions from Justices were helpful in understanding each side's argument? Were there other questions you would have asked? Did they consider the policy implications of a decision either way?

4. Do you agree with the Justices' decision. Why or why not?

Legislative Debate — Citizen's Initiative

Assume that the following initiative is on the ballot. You are attending a public meeting of supporters and opponents to debate this initiative. Prepare arguments for one side, and be prepared to debate this law with your fellow citizens. Remember to show courtesy to your opponents!

Save Our State. Illegal aliens are not eligible to receive government-supported non-emergency medical care or free public education in this state. Teachers and medical care workers must report any "apparent illegal immigrants" they deal with.

Sample arguments

- **Robert Sampson, Save Our State Coordinator**. "I don't have anything personal against immigrants. It's just that this state is going bankrupt. We can't take in all of the illegals in the world. How many can we educate, medicate, keep in jail and support? Just because they are here does not mean they have a right to stay here and a right to our tax dollars. The proposed law still allows for emergency care, so if someone has a medical emergency, they can still seek medical care."

Rosa Vargas, Mexican American Legal Defense Fund. "People do not come to this country for free medical care. They come for jobs, and they contribute to the economy. If we pass this law, enforcing it will result in people living in the shadows of society, afraid to seek necessary medical care. Epidemics could result. Also, if doctors and teachers are asked to report illegal aliens, it will result in racial discrimination. Anyone who looks like a Hispanic will be targeted, and asked to prove they are a citizen. Soon we'll all be asked to carry ID cards."

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
KINESTHETIC

Immigration

Lesson 4

Objectives

Students will:

- Demonstrate their understanding of the immigrant experience by writing journal entries from diverse perspectives and/or periods in time.
- Share their journals with peers and solicit peer assessment.

Materials

- Ordinary classroom and art supplies
- Person who has immigrated to speak to class (optional)
- Journal criteria
- Sample journal entries

Time Required

1 to 2 class periods.

Procedures

■ **Invite a speaker** or ask students in your classroom who have immigrated to share their experience. If this is not practical, read a journal entry from primary documents, picture books (see bibliography), or use a poem.

A good poem is "The Climb Up," part of an epic poem, *Kentucky*, written by Yisroel-Yaankev Schwartz. This poem traces the life of a Jewish family in the southern United States from the arrival of the immigrant father, Josh, who sets out as a peddler, to the growing up and assimilation of the grandchildren. (Found in *The Penguin Book of Modern Yiddish Verse*, edited by Irving Howe, Ruth R. Wisse, and Khone Shmeruk, New York: Viking, 1987.)

■ **Ask students** to write a series of journal entries through the eyes of an immigrant. They may choose:

- To write at different periods in one immigrant's life, i.e. something from the early days, then after five or ten years, and finally, after 30 or 40 years of having lived in the United States.

— or —

- To record one particular group's immigrant experiences, for example, the Chinese: a sojourner working on the railroad, someone expelled during the riots of the 1880s, and someone recently immigrated from Hong Kong or after the Tiananmen Square riots in Beijing.

■ **Invite the class** to set the criteria for the journal entries. This may include number of entries, length or content, cover and style. You may want to develop a list of assessment criteria. A sample follows this lesson. Share the sample journals with your class, if you think they need more direction.

- **Have students** trade and review and score each other's journals. Encourage peer assessors to give positive feedback. Teach students about the compliment sandwich, "one suggestion for improvement wrapped between two positive statements" to facilitate successful peer assessment. Encourage sharing of highlights.

- **Hand journals** back to authors and discuss scoring and comments. Give students a few minutes to write a reflective comment about the assignment and their reactions to the assessment. Collect journals and comments.

Extension

Group students who wrote about the same period together. Have students play the roles of the people they wrote about, and circulate and meet the other "immigrants." Encourage them to talk and share their experiences.

Criteria for Journal Entries

1. Three or more entries (perspectives) clearly identifiable.

2. Believable. (Does the writing seem like it was written by an immigrant recording their feelings, experiences, and what they are learning?)

3. Historically accurate. (Based on research, are the events recorded realistic to the period, i.e. no television in the 1840s, etc.)

4. Describes the setting (including time and place), tells what the main character is doing and learning, shares the feelings the main character has about his/her immigrant experience at this point.

Sample Journals From Fifth Graders

March 23, 1840

Dear Diary,

My name is Josephina Henry and I am an Indian. I have four days till my Sunrise dance. I can't wait. Today I have to go to my grandparent's home to rehearse it. I was so happy I forgot what to say!

March 24, 1840

Dear Diary,

Today my dad took me for a ride through the meadow. He told me that I would soon have to get married and that he couldn't believe I was having my Sunrise dance and was becoming an adult. I said I could not believe it either.

March 25, 1840

Dear Diary,

Today we got ready for my Sunrise dance. I just can't wait. I can't fall asleep. I hear my mom and dad talking. My mom made all the food and my dad cleaned. Tomorrow one hundred people will be arriving to see me become a woman.

March 26, 1840

Dear Diary,

I have to make it fast. My guests await me but I have butterflies in my tummy. I have to go.

Sincerely,

Josephina, age 12

Sample Journals (cont.)

May 20, 1887

I have just arrived on Ellis Island from Palmero, Italy. The boat ride was rather turbulent and harsh. It is May now and it is rather chilly outside. I went to Boston and found a boarding house that had a three room apartment so I decided to stay there.

July 25, 1888

Boy, I'm lucky that I can read and write in English or it would be impossible to get a job around here. Today I'm going out to find a nice job that pays good money so I can send some home like I intended.

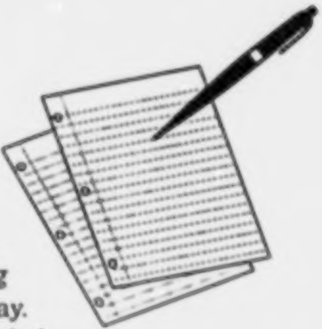
December 9, 1890

Today I got a job. The man gave me a pick and a shovel and told me to get to work so I was put to work digging ditches. It was hard work but I could manage pretty easily and that is going to be my career.

June 1, 1896

I have quit my job as a ditch digger and have taken up a job as a lumberjack in Maine. Then I bought a small farm in Carter, Maine. I did well and grew most vegetable crops. I will give my farm to my sons.

Sample Journals (cont.)



June 15, 1937 (from the Philippines to Hawaii)

(19 years old) Today the sea was very rough. It was so rough that I felt like a ball being bounced around. I had a hard time eating my breakfast because my hard boiled egg rolled off my plate and bounced on the floor and rolled away. A waiter tripped on it and all the food he was carrying landed on me, which included soup and a roll. Today was miserable!

December 16, 1938 (from Hawaii to California)

(20 years old) It was a special day today. I have finally saved up enough money to get a ship to the mainland. I hope the seas aren't rough like my last trip. I have been wanting to go to the mainland for a long time. It has been hard work earning enough money to afford my trip. Learning a trade in the restaurant business takes long hours and pays little money.

August 21, 1954 (Los Angeles, California)

(36 years old) I am very, very, very excited. I'm going to get my citizenship tomorrow! I feel great. My friend already has his citizenship. I rewarded myself with going to a fancy restaurant to eat. They had excellent food. I can hardly go to sleep I'm so excited.

March 2, 1959 (Los Angeles, California)

(41 years old) Today I had many customers. It was a busy day in the restaurant but it was exciting. I was asked to chef in one of the fanciest restaurants in Palm Springs. I'm going to depart for Palm Springs tomorrow. I'm excited about what my life is going to be like!

Lorenzo Morales

LINGUISTIC
INTERPERSONAL
LOGICAL/MATHEMATICAL

Immigration

Lesson 5

(OPTIONAL — FOR MORE ADVANCED CLASSES)

Objectives

Students will:

- Examine current U.S. immigration policy by reading newspaper articles.
- Identify an issue related to current immigration policy that they think should be changed, or make arguments to support one aspect of present immigration policy.
- Propose and draft legislation to effect change, or strengthen present legislation.

Materials

Copies of handouts:

- Newspaper articles
- Handouts from Lesson 3 of the Animal Rights unit

Time Required

1 to 2 class periods.

Outside Resource Person

Lawyer, legislator, or legislative aide to describe the process a bill goes through before becoming a law (optional).

Procedures

■ **Divide students** into groups of no more than 3 or 4 students. Make copies of the attached articles so each group has one or two articles to read and analyze. Make enough copies for each student to have an individual copy of their group's articles.

■ **Pass out the articles.** Before the students begin reading, ask them about what we mean by "bias." Remind them that each writer or journalist has a point of view, even if they intend to be neutral. Many magazines have an editorial slant and it is helpful to be aware of that slant when reading and evaluating information from that source. Encourage students to evaluate the author's point of view and be conscious of bias. Tell students to read silently and highlight important information.

■ **In the small groups,** after they have read the articles, ask students to brainstorm as many issues and aspects of current immigration policy as they can list from their reading. For example: Should illegal immigrants receive medical benefits? Should children of illegal immigrants born in the U.S. be citizens? Do immigrants contribute more to the economy than they receive?

■ **Ask each group** to share their lists with the class to create a listing of all the aspects and issues identified.

■ **Ask students** to work in small groups of no more than two or three to select an issue or aspect of current immigration policy for which they will draft legislation to effect change or strengthen present legislation. Review the drafting handout, from the Animal Rights unit.

- **If you choose** to hold a legislative hearing, give students a copy of the handout "Steps in the Legislative Process" from the Animal Rights unit. Review the steps, and then hold a hearing.

- **Alternatively, have each group** present their proposals to the class. Having copies of each group's proposal helps with analysis and discussion. Give five minutes per group for presentation and a question and answer period.

- **To complete the unit**, ask each student to write a persuasive letter to their senator or representative, citing their proposal, giving supporting data, and soliciting the senator's support on the issue or aspect they have targeted.

Address letters to members of Congress as follows:

The Honorable____________________
United States Senate
Washington, DC 20510

The Honorable____________________
United States House of Representatives
Washington, DC 20515

Don't Give Me Your Tired, Your Poor ...

By Pete Wilson, Governor of California
The San Diego Union-Tribune
January 9, 1994

This year, California faces yet another enormous budget crisis, badly exacerbated by both the policies and the inaction of the federal government.

Defense cuts, environmental decisions, and tax hikes coming from Washington are all hurting California's economy. But nothing is more devastating than Washington's irrational immigration policy that fails to control the border.

During just the past four years, enough people to fill a city the size of Oakland have illegally crossed the border into California. In Los Angeles alone, undocumented aliens and their children total nearly a million people. That's a city of illegal immigrants almost the size of San Diego.

I don't fault people trying to find a better life in our nation. In fact, it's hard not to admire their courage and determination. America is a nation of immigrants—three of my own grandparents were immigrants to America. They came for the same reason anyone comes—to build a better future. They brought their hopes and dreams, and the nation benefited from them and millions like them. But there's a limit to how quickly and how many immigrants we can assimilate at once.

If we ignore this flood of illegal immigration, we'll erode the quality of life for all those who live here legally.

Our classrooms are already bursting, but by federal law they're open to anyone who can clandestinely slip across America's 2,000-mile border. Our public health care facilities are being swamped, but two-thirds of all babies born in Los Angeles public hospitals are born to parents who have illegally entered the United States. And the budgets for our parks, beaches, libraries, and public safety will continue to suffer while California spends billions to incarcerate enough illegal aliens to fill eight state prisons.

The proposals we've heard in recent months—strengthening the Border Patrol, imposing a toll on those who cross the border, deporting more undocumented felons from our prisons—all acknowledge the need for action.

But none of them deals with the incentives by which federal law and immigration policy encourage illegal immigration, and indeed reward those who succeed in violating U.S. law by entering the United States illegally.

We need wholesale reform. We need to strike at the root of the problem. And the root of the problem lies not on our border, but in policies devised 3,000 miles to the east in our nation's capitol. The law is clear that the federal government alone has responsibility for devising and implementing immigration law and policy. The immigration crisis facing America is the result of a failure of will in Washington.

Federal failure to deal with the problem is taking jobs from legal residents—many of them minorities—and killing the American dreams for those who suffer wage and job losses in California and every other state on our southern border.

That's why we must return reason and fairness to America's immigration laws. The federal government has failed miserably at controlling the border. Crossing America's southern border is easier than crossing Prospect Street in La Jolla. Millions have done it, and millions more will if we don't take action.

I've already urged President Clinton to seek assistance from the Mexican government to help stop the flood of illegal immigrants on the Mexican side of our border. But controlling the border isn't enough. In fact, there's little point in even having a Border Patrol if we're going to continue to reward those who successfully violate U.S. law and enter our country illegally.

Today, the federal government forces the states to give health care, education and other benefits to individuals who are in our country illegally. These mandated services to illegal immigrants and their children are costing California taxpayers $3.6 billion a year.

Because Washington forces us to fund these services for illegal immigrants, it means we have to cut $3.6 billion worth of health care, education and other services that are needed by, and would otherwise be available for, legal residents of California.

California has initiated an innovative program of preventive services for children in health care, mental health care and preschool, but funding for these programs is being siphoned off to programs for illegal immigrants mandated by the feds.

We're forced to cut aid for the

needy elderly, blind and disabled who legally reside in California, because Washington mandates that we spend more than three-quarters of a billion dollars a year on emergency medical services for illegal aliens and more than a billion dollars a year to educate illegal aliens in our schools.

Saving just the $1.7 billion we spend educating illegal immigrants in California schools would allow us to put a new computer on every fifth grader's school desk; provide preschool services to tens of thousands of four-year-olds; expand Healthy Start Centers to hundreds of new sites, and provide more than 12 million hours of tutorial and mentoring services to at-risk youth.

Depriving legal California residents of these services is wrong. So I've urged Congress to repeal the federal mandates that require states to provide health care, education, and other benefits to illegal immigrants.

If the members of Congress had as much guts as most illegal immigrants—the guts to tell the truth—they'd admit that they are not only welching on their obligation but insisting that California and other states provide benefits to illegal immigrants even when it means denial of needed services to our legal residents.

The president and Congress should pay for these mandates as long as they require the states to provide them. And we're going to demand that they do meet that obligation and pay California the money they owe us. Congress should then create a tamper-proof legal resident eligibility card and require it of everyone seeking government benefits.

Finally, we must fundamentally rethink the very foundation of our immigration laws. The Constitution has been interpreted as granting citizenship to every child born in the United States, even the children of illegal aliens. Some illegals come to our country simply to have a child born on U.S. soil who can then gain American citizenship. That, of course, renders the child eligible for a host of public benefits. Just since 1988, the number of children of illegal aliens on our state's welfare rolls has grown more than fourfold.

It's time to amend the Constitution so that citizenship belongs only to the children of legal residents of the United States.

President Clinton did not create the grave problem of illegal immigration, he inherited it. But this exclusively federal responsibility now belongs to him and to Congress.

They must move without delay to enact these critical reforms to our nation's immigration laws. There is no time to waste, because the problem grows every day, swelled by the thousands of illegal aliens who slip across the border every night.

It's endangering the jobs we need to rebuild California's economy and the safety of too many California neighborhoods. And those most endangered in both ways are ironically the legal residents of the same ethnic groups.

We need immigration reform and we need it now.

Rethinking Immigration

By Frank Trejo, Staff Writer
The Dallas Morning News
January 2, 1994

Stark images remain: Chinese refugees jump from ships onto U.S. shores; the World Trade Center smolders in the snow; desperate Haitian boat people cling to rafts; and impoverished Mexicans cross a line between two disparate countries.

Immigration—illegal and legal—splashed onto the national scene in 1993 with the kind of scope and intensity that in generations past has resulted in massive overhauls of the country's laws.

The most recent focus on immigration is traced to a combination of factors: near-record numbers of new entries, the declining U.S. economy and a rash of publicized incidents involving immigrants.

Virtually everyone involved in the debate acknowledges that the current anti-immigration sentiment could also result in reforms that significantly restrict the numbers of people entering this country.

Dozens of bills addressing immigration have been introduced in Congress, and the issue is expected to take center stage in 1994 after work starts on national health-care reform.

The issue takes on special significance in Texas, which is home to more than 300,000 undocumented immigrants, according to the U.S. Immigration and Naturalization Service. Only California, New York and Florida have more such residents.

Texas also has ranked second or third in the number of legal immigrants during the past three years, and its border with Mexico is the longest of any state.

Current immigration proposals range from revamping the backlogged political asylum system to increasing Border Patrol personnel and denying medical, social and educational benefits to illegal immigrants and their children.

But some also are advocating a drastic reduction in legal immigration or even a moratorium of several years.

"I suspect we may be at a point where we are witnessing the twilight of the age of innocence when it comes to immigration," said Demetrios Papademetriou, director of the immigration policy program at the Carnegie Endowment for International Peace in Washington, D.C.

Mr. Papademetriou believes the current attention to immigration stems from historical inattention.

"There has been a certain lack of questioning.... Very few people were saying, 'Are we opening the door too much?'" he said.

"I'm not quite saying we would have come up with a substantially different approach. But we would have gone into it with our eyes open."

Although he doubts that wholesale restrictions will be implemented, Mr. Papademetriou said, "certainly this will be a year of activism rather than passivity."

Anti-immigrant mood

Some immigration analysts see an anti-immigrant groundswell that is perhaps best exemplified in California, where Gov. Pete Wilson has been at the forefront of the fight against illegal immigration.

That state already has enacted several measures aimed at illegal immigrants. The measures include increasing penalties for fraud involving state medical aid, requiring documentation to obtain a driver's license and requiring that local law enforcement agencies cooperate with the INS.

What remains to be seen is how drastic the changes will be. "There's a chance this thing is going to spread like wildfire, and we're going to see some horrendous changes," said Frank Sharry, executive director of the National Immigration Forum in Washington, D.C. "But I guess I still have enough faith in the American people and Congress that they will exercise some restraint," said Mr. Sharry, whose organization is a national coalition of immigrants' rights groups.

John C. Vinson, president of the American Immigration Control Foundation, said he believes that despite a continuing reluctance on the part of politicians at all levels to address the issue, "a watershed" has been reached.

"The problem is going to remain on center stage until something is done about it... . It's just not pleasant living in a situation where we feel like aliens in our own country," said Mr. Vinson, whose organization, based in Monterey, Va., acts as a clearinghouse for people seeking more restrictive immigration policies.

Not all are illegal

Although illegal immigration is at the center of the debate, the undocumented are just part of the issue.

According to the INS, more than 800,000 legal immigrants entered the country last year. In addition, more than 100,000 refugees were allowed in and thousands were granted political asylum. Recent INS estimates place the number of undocumented immigrants entering the United States at 300,000 each year. The INS estimates that 3.2 million live in the country, with about 10 percent settling in Texas.

Many immigrants and their supporters express concern that the anti-immigrant sentiment and statements sometimes do not differentiate between illegal and legal immigrants.

They contend that the rush to control immigrants is an attempt to blame the nation's economic problems on those who are the least able to defend themselves politically.

They see xenophobia and racism as factors in the anti-immigration effort.

And they worry about the backlash that the national mood can have on legal immigrants, the children of immigrants and those U.S. citizens who look foreign.

They cite anecdotal evidence that the backlash has begun. Immigrant advocates in California say beatings and harassment of Hispanics and Asians are rising.

"If the debate focused on illegal immigration itself ... I think we would be thrilled to have it stop there," said Jana Mason, a lobbyist for the American Council for Nationalities Service, a New York-based nonprofit group that works on immigration advocacy issues. "The problem is that a discussion on illegal immigration very seldom stays a discussion on illegal immigration."

She said that occurs even when "experts" speak about illegal immigration.

"The next thing you know, somebody will relate it to the fact that people are using the asylum system to make chumps out of America and then they're going on welfare and blowing up buildings when they have a chance," Ms. Mason said.

Waiting for asylum

Some of the suspects in the February bombing of the World Trade Center in New York were reportedly awaiting processing of their asylum applications.

"And then somebody will say, Yes, and it's ridiculous that we're letting Iraqi ex-soldiers that were shooting at our boys into the country. What are we going to do about that?"

A national uproar followed revelations earlier this year that some former Iraqi soldiers who had defected had been admitted into the United States as refugees. About 50 of them were resettled in the Dallas area.

Those who want to see changes reject the claims and say they merely are facing reality—that "enough is enough" and a country can only take in so many people before the lives of those living here begin to suffer.

They point to studies—often disputed—that show that immigrants cost more than they contribute to the cost of medical care and education. Immigration opponents also cite the number of immigrants, legal and illegal, who are involved in crime.

Last fall, investigators for a U.S. Senate subcommittee reported that illegal immigrants are the fastest-growing segment of the federal prison population, accounting for 25 percent of inmates.

They also note that immigration affects virtually every aspect of U.S. life today. It was part of the recent North American Free Trade Agreement debate.

It already is being discussed in connection with the administration's health care plan and the coming effort to reform the country's welfare system.

A personal issue

The matter may be a national debate for some, but for people like Edgar Arriaza, it's as personal as his family and friends.

"People think it is so easy for us to leave our homes, our countries, to change our whole way of life from one day to the next," said Mr. Arriaza, who is vice president of Guatemaltecos Unidos de Dallas (United Guatemalans of Dallas).

The group acts as an advocate for the needs and rights of the thousands of Guatemalans in North Central Texas. Many of them are here without documents.

Mr. Arriaza now is a legal permanent resident. But when he first arrived in the United States 11 years ago, he did so as an illegal immigrant.

"I remember what that was like: the fear, the struggle, the fight to survive each day," he said. "I think it's a lie, when people say that we're coming here to use up medical services and to get welfare."

Mr. Arriaza believes he is typical of the millions of Latin American immigrants who have arrived in the past decade. They come, he said, to escape poverty and war. They seek to make a living and to provide better opportunities for their children.

Mr. Arriaza said when he first arrived he worked in a factory, from 6 p.m. to 6 a.m., making $2.90 an hour. If he was lucky, he said, he earned $125 a week with overtime.

Today he works in a heating and cooling company in the Dallas area, and is hoping to start his own business soon.

"I think the day immigrants stop coming to America, it will be a bad day," he said.

But immigration's impact on states and local communities often is overlooked, said Dan Stein, executive director of the Federation for American Immigration Reform, which for years has sought controls on immigration.

Local impact

"Immigration policy decisions are made in an isolated federal level. The problem is that the federal government does not take into consideration the local effects of those policies," Mr. Stein said, citing the 1982 Supreme Court decision that mandated public education for all children, regardless of immigration status.

Mr. Stein said the grass-roots sentiment has developed because people feel powerless, because they cannot go to their local officials to complain. Robert P. Higley of Austin remembers a time when he couldn't get anyone to listen to his arguments. "Not one year ago I called a radio station and tried to get on one of their talk shows. They told me, 'That's a dead issue,'" Mr. Higley said. "But because of what's happened this year ... people who had been indifferent are saying, 'Wait a minute, something's going on here.' ... People are beginning to recognize the threat immigration poses to our country."

Mr. Higley is chairman of the Austin Citizens Committee for Fair Immigration, which has sought stricter controls on immigration since 1986, when Congress was debating the Immigration Reform and Control Act. That act granted amnesty to more than 3 million immigrants who had been undocumented. It also made it illegal to hire undocumented workers.

Mr. Higley said he has been called prejudiced by some of those who oppose his views.

"It was and still is true that if you become involved in advocating restrictions that involve another ethnic group, that's considered racist," Mr. Higley said.

But he noted that many people of various ethnic backgrounds believe as he does.

"We're not opposed to immigration. We're opposed to uncontrolled immigration," Mr. Higley said. "We believe we should admit into our country those people who can make a contribution to our society."

Stress skills, abilities

Mr. Higley and Mr. Stein say U.S. immigration policy ought to stress admission of people with skills and abilities this country can use, rather than simply having a system that relies on family relationships.

"Nobody ever discusses the long-term implications of our immigration policy," Mr. Stein said. "The 1986 law legalized over 3 million people, and in 1990 Congress increased the number of people being let in by some 40 percent."

If and when these people become citizens, they can then petition for their relatives, including brothers and sisters, to immigrate. Such a system, Mr. Stein said, does not take into account the economic and labor needs of this country. Mr. Sharry of the National Immigration Forum disputes the idea that immigrants generally cost more than they contribute. His organization believes that the overall impact of immigrants on a society is good.

"Talk about family values and everything this country is supposed to stand for, immigrants are the best example of that," he said. "Let's talk about immigrants being reunited with family members, of refugees being saved from political persecution, and of skilled workers coming."

Mr. Sharry does not deny that the system needs improvement, especially when it comes to illegal immigration. But, he said, there is a danger of overreacting.

"We're trying to challenge our political leaders and the general public to commit to a rational debate," Mr. Sharry said. "This is not simply an issue of compassion or of conscience. It's an issue of what's best for the country."

Act deliberately

The approach, he said, should be deliberate and thoughtful. "If we act deliberately, we will reaffirm the basic structure of our immigration policy and work to make improvement on the margins, where improvement needs to be made," Mr. Sharry said.

He said that among the areas that need improvement are the backlogged asylum procedure, document verification process and border enforcement. And especially, he said, more attention should be given to the problems that cause immigrants to leave their countries in the first place.

"We have a right to control our borders," Mr. Sharry said, but it should not be done by pitting Americans versus "them."

Bob Dennis, a Dallas lawyer and member of the North Texas Immigration Coalition, said he is disappointed that the current debate is "playing into the jingoistic mood of the country."

"I'm really troubled by the fact that we as a society appear to be holding ourselves out as being somewhat better, that we deserve what we have and that someone else doesn't," Mr. Dennis said. "What about the common humanity that all of us who inhabit the planet share?"

But some of those calling for a more restrictive immigration policy said it is time to face economic reality and time to change philosophies—from one that emphasizes family reunification to one that seeks to attract skilled workers.

Now that the debate has begun, some adjustments are likely, said Mr. Papademetriou of the Carnegie Endowment.

"Legal immigration has a place in this society. It is part and parcel of this country," he said. The debate, Mr. Papademetriou said, has generally been toward "negativism and toward controls."

"But I'm also impressed that there still is an opportunity to do a lot of good and a lot of damage," he said.

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Debate Rages Over Economic Benefits of Immigrants

Series: The Immigration Debate
By Frank Trejo, Staff Writer
The Dallas Morning News
January 3, 1994

The question of whether immigrants are an economic benefit or burden is a key element in the national immigration debate.

But the answer often proves elusive.

California Gov. Pete Wilson has based much of his campaign to control immigration on figures from state agencies that show billions of dollars are being spent on services for illegal immigrants and their children.

Those services include education, health care and criminal justice. In education, for example, that state's officials say $3 billion is spent each year on schooling for illegal immigrants or their children.

Those who are advocates for immigrants contend that they use public services at much lower rates than the native born and contribute more in taxes than they take away.

They say the problem is that often the federal taxes immigrants pay don't come back to the local governments that provide the services.

Each side in the debate cites ample evidence to support its case. Yet most local entities, such as schools and hospitals, say they are unable because of laws or logistics to accurately determine the effect of illegal immigration.

"It's just the nature of the beast, that this is a very politicized kind of thing, and that's disturbing to those of us who don't believe we're politicized," said Dr. Donald Huddle.

Dr. Huddle, professor emeritus in the economics department at Rice University in Houston, has been researching the effects of immigration on the labor market for more than a decade.

And throughout the years, he has released numerous studies that immigration opponents say conclusively prove the negative effects of immigration.

Three studies

Last year, Dr. Huddle released no fewer than three such studies. And he is working on a study focusing specifically on Texas. The Texas study should be released early this year.

According to one of his studies released in July, Dr. Huddle concluded that 19.3 million legal and illegal immigrants have settled in the United States since 1970.

These immigrants, according to Dr. Huddle, in 1992 generated costs of $42.5 billion more than what they paid in taxes. Included in that figure was nearly $12 billion for assistance to U.S. workers displaced by immigration.

Studies such as those of Dr. Huddle are praised by U.S. Rep. Lamar Smith, R-San Antonio.

"It seems that illegal immigration is growing exponentially and Americans are more aware of the impact of illegal immigration on their pocketbooks," said Mr. Smith, who calls immigration "the emerging issue of the '90s."

Mr. Smith is a member of the House Republican Task Force on Illegal Immigration, which is looking for ways to reform U.S. immigration policy.

"The cost to American taxpayers and American workers increases every year," Mr. Smith said. "It's reached a critical mass. People realize illegal immigration is costing billions of dollars and adding to the crime rate."

He called Dr. Huddle's studies the most accurate and up-to-date on the subject.

But such studies are vehemently rejected by researchers such as Julian L. Simon, who teaches business at the University of Maryland and is author of *The Economic Consequences of Immigration*.

"Study after study shows that immigrants pay taxes and don't use welfare services in any great numbers, simply because they are undocumented and are afraid of getting rousted, or don't know about them, or because they are generally young and healthy," Mr. Simon said.

Irrelevancies

And Mr. Simon blasts those who say the figures show differently. "It's miscalculation built on irrelevancies," he said.

Mr. Simon estimates that the typical immigrant family annually pays more than $2,000 in taxes above what it uses in public services. He criticized a Los Angeles County report that said immigrants contributed $139 million in 1992, while costing $947 million in services.

He said that study failed to adequately take into account the federal income taxes paid by immigrants. And Mr. Simon noted that another study by researchers for the Urban Institute found a much different result. That study found that the deficits attributed to immigrants were exaggerated in the Los Angeles County study, and that long term, immigrants make substantial contributions to their communities.

But cities struggling with economic problems often are limited by resources and sometimes laws from doing a more accurate read on the impact of immigrants.

For example, Dallas Independent School District officials say they do not attempt to count the number of immigrants, especially the undocumented.

A 1982 Supreme Court decision required that public schools provide an education to all children living in their districts, regardless of immigration status.

Similarly, officials at Parkland Memorial Hospital in Dallas say that as a public facility they are compelled to serve all who come to their door and do not document patients' home countries.

But in recent months and weeks, some entities are paying more attention to the costs they incur from immigrants.

Requiring proof

Officials in the Rio Grande Valley town of La Joya, for example, have announced their intention to require proof that students' parents or legal guardians live in the district.

That plan is an effort to ease the strain of 1,000 new students entering the district each year. Many of them, according to the district, are children whose parents live in nearby Mexico.

Immigration also is blamed for increasing the nation's crime rate.

Last fall investigators for a U.S. Senate subcommittee reported that illegal immigrants are the fastest-growing segment of the federal prison population, currently accounting for 25 percent of inmates.

People who are advocates for immigrants emphasize that the majority of immigrants, about 80 percent, enter this country legally. And the advocates stress that their contributions have helped make America.

"We're talking about an act, the same act—crossing the border and immigrating into this country—that we have glorified in the past and now that same act is perceived as negative, pejorative ... scoundrels, thieves, people who want to take away our jobs and eat up our tax dollars," said Raul Yzaguirre, president of the National Council of La Raza, a Washington, D.C.-based Hispanic advocacy group.

Frank Sharry, executive director of the National Immigration Forum, emphasized that since most immigrants enter legally, they are in essence "invited" by U.S. immigration policy.

Through these laws, "we're benefiting American companies. We're benefiting American citizens and permanent residents who have family members, and we're benefiting American foreign policy and humanitarian policy by setting better standards of who we accept as refugees," Mr. Sharry said.

America: Still a Melting Pot?

By Tom Morganthau, with Adam Wolfberg and Bob Cohn in Washington, Andrew Murr in Los Angeles and bureau reports
Newsweek
August 9, 1993

Few Americans remember Israel Zangwill, but he was a transatlantic celebrity in the years before World War I. Poet, novelist, dramatist and political activist, Zangwill was a founding father of the Zionist movement and an ardent suffragist. He knew Theodore Roosevelt, Oscar Wilde and George Bernard Shaw, and he was a prolific, if preachy, writer. Here is a bit of dialogue from Zangwill's greatest hit, a four-act melodrama that opened in Washington in 1908.

The speaker is David, a young composer: "America is God's Crucible, the great Melting-Pot where all the races of Europe are melting and re-forming.... Germans and Frenchmen, Irishmen and Englishmen, Jews and Russians—into the Crucible with you all! God is making the American!"

The imagery comes from steelmaking, which was state-of-the-art technology then. The play is "The Melting-Pot," a phrase that has lived ever since. Zangwill, despondent at the eclipse of many of his political ideals, suffered a nervous breakdown and died in England in 1926. America had already turned its back on his optimism and, in an orgy of blatant racism, virtually cut off immigration. Two generations later, immigration is running full blast—and Americans once again are asking fundamental questions about the desirability of accepting so many newcomers and the very idea of the Melting Pot. They believe, with some justice, that the nation has lost control of its borders. They are frightened about the long-term prospects for the U.S. economy and worried about their jobs. They think, erroneously, that immigrants are flooding the welfare rolls and are heavily involved in crime. And they are clearly uncomfortable with the fact that almost all the New Immigrants come from Latin America, the Caribbean and Asia.

The latest *Newsweek* poll reveals the public's sharply shifting attitudes. Fully 60 percent of all Americans see current levels of immigration as bad; 59 percent think immigration in the past was good. Fifty-nine percent also say "many" immigrants wind up on welfare, and only 20 percent think America is still a melting pot.

All this—an incendiary mixture of fact, fear and myth—is now making its way into politics. The trend is most obvious in California, where immigration is already a hot-button issue, and it is surfacing in Washington. Recent events like the World Trade Center bombing, the arrest of Sheik Omar Abdel-Rahman and the grounding of the Golden Venture, an alien-smuggling ship crammed with nearly 300 Chinese emigrants, have revived the 10-year-old controversy about illegal immigration. "We must not—we will not—surrender our borders to those who wish to exploit our history of compassion and justice," Bill Clinton said last week, announcing a $172.5 million proposal to beef up the U.S. Border Patrol and crack down on visa fraud and phony asylum claims. On Capitol Hill, the revival of an issue that many had thought dead is shaking both political parties, and Democrats such as Sen. Dianne Feinstein of California are scrambling to neutralize nativist backlash. "Some of the people who opposed me totally 10 years ago are now saying, 'What's happening to our country? We gotta do something!'" said Republican Sen. Alan Simpson of Wyoming, a perennial advocate of tougher immigration enforcement. "It's ironic beyond belief. Attitudes have shifted dramatically, and it's coming from the citizens."

This is not the 1920s—a time when most Americans regarded dark-skinned people as inherently inferior, when the Ku Klux Klan marched through Washington in a brazen display of bigotry and when the president of the United States could tell an Italian-American congressman, in writing, that Italians are "predominantly our murderers and bootleggers ... foreign spawn [who] do not appreciate this country." (The president was Herbert Hoover and the congressman was Fiorello La Guardia.) The civil-rights revolution changed everything: it gradually made overt expressions of any ethnic prejudice into a cultural taboo. Almost accidentally, the moral awakening of the 1960s also gave the nation an immigration law that reopened the Golden Door. This law, passed in 1965 with the firm backing of Robert Kennedy, Edward Kennedy and Lyndon Johnson, has slowly led to a level of sustained immigration that is at least as large as that of 1900-1920. It inadvertently but totally reversed the bias in U.S. law toward immigration from Europe, and it created a policy so complicated that almost no one understands it. The policy, in fact, is a mess, whatever one thinks of the desperate Chinese on the Golden Venture or the young Latinos who scale the fence at Tijuana every night.

Bill Clinton's goal, like that of most defenders of continued large-scale immigration, is to drive home the distinction between legal immigration (good) and illegal immigration (very, very bad). Illegal immigration is undeniably out of control. Congress tried to stop it in 1986 with a law called IRCA, the Immigration Reform and Control Act, which was based on a two-pronged strategy.

IRCA offered amnesty and eventual citizenship to an estimated 3.7 million illegal aliens and, at the same time, aimed at shutting down the U.S. job market by making it illegal for employers to hire undocumented aliens. The act has failed. Despite the amnesty, the estimated number of illegals has once again risen to between 2 million and 4 million people. "For the first two years there was a significant drop ... because folks thought there was a real law here," says Lawrence H. Fuchs, acting chair of the U.S. Commission on Immigration Reform. "But the word got out" that IRCA had no teeth, Fuchs says, and the influx resumed. Fuchs concedes that as many as 500,000 illegals now enter this country each year, though he admits it is impossible to know for sure. The concern over illegal immigration is fueled, in part, by two conflicting fears. Illegals are vulnerable to exploitation by employers and are often victimized—extorted, kidnapped, raped, tortured and sometimes killed—by criminals and smugglers. At the other extreme, in cities like Los Angeles, they flood the labor market and set off bitter competition with American workers and legal immigrants for jobs. But the real problem is the subversion of U.S. law and policy, and that creates two dilemmas for the federal government. The first is what to do about the undocumented aliens who have made their way into this country since IRCA: another amnesty, obviously, would only encourage more illegal immigration. The second dilemma is worse. There is no particular reason to believe that the current influx of illegals cannot rise from 500,000 a year to 600,000 a year or even beyond. This is conjectural but not necessarily alarmist: as Fuchs says, the word is out. Looking around the world, "one can't find the natural forces that will bring down the flow," says Harvard University sociologist Nathan Glazer. "The first impact of prosperity will be to increase it. Look at China. These people don't come from the backward areas, they come from the progressive parts. As they learn how to run a business, they say to themselves, 'Why not go to the United States and do even better?'"

The same applies to Bangladesh, the Dominican Republic, Mexico or the Philippines. The dynamic, as Fuchs says, is rooted in powerful macroeconomic forces now at work all around the globe—rising birthrates and the conquest of disease, prosperity or the hope of prosperity, even modern telecommunications. (The glittery materialism of American TV shows is now being broadcast everywhere.) Much as Americans tend to regard the new immigrants as poor, uneducated and less skilled, the vast majority are surely enterprising. What they seek is opportunity—the opportunity to hold two jobs that no Americans want, to buy a television set and a beat-up car, to start a family and invest in the next generation. Immigration is for the young: it takes courage, stamina and determination to pull up your roots, say goodbye to all that is dear and familiar, and hit the long and difficult trail to El Norte. Illegal immigration, with all its hazards, is for the truly daring: the Latino men who wait on Los Angeles street corners, hoping for day-work, have faced more risk than most Americans will ever know. You can argue, then, that the distinction between legal and illegal immigration is nearly meaningless. Immigrants are immigrants: how they got here is a detail. And, in fact, the arcane system of regulation created by the 1965 law, together with its amendments and adjustments since, implicitly accepts this argument. The law recognizes three reasons to award immigrant visas—job skills, especially those that somehow match the needs of the U.S. economy; a demonstrable reason to seek refuge from war or political persecution, and kinship to an American citizen or a legal alien. This triad of goals replaced the national-origin quota system of 1924, which heavily favored immigrants from Northern and Western Europe and severely restricted immigration from everywhere else. It is a matter of lasting national shame that Congress, throughout the 1930s and even after World War II, refused to adjust the law to admit the victims of the Holocaust. That shabby record outraged Jews and had much to do with the passage of the immigration reform act of 1965. So did the old law's bias against Slavs, Poles, Italians, the Chinese and the Japanese.

But all three of these goals have been steadily distorted—chipped at, twisted out of shape—by the realities of immigration since 1965. Kinship to U.S. citizens, known as the "family-reunification policy," has become the overwhelming favorite of visa seekers and the primary reason the pattern of immigration has shifted so hugely to the third world. It was never intended to be: given the fact that most immigration to the United States had always been from Europe, those who voted for the act of 1965 generally assumed that family-reunification visas would be used by Europeans. They also assumed that there would be no large increase in immigration to the United States. "Our cities will not be flooded with a million immigrants annually," Sen. Edward Kennedy told a subcommittee hearing. "Under the proposed bill, the present level of immigration [about 300,000 a year] remains substantially the same...."

That is not what happened. Immigration from Latin America, the Caribbean and Asia, a trickle in 1965, has steadily widened so that it now comprises about 90 percent of the total. Legal immigration from 1971 to 1990 was 10.5 million people—but if 3 million illegals are (conservatively) added in, the total is pretty much the same as 1900-1920, the peak years in American history. Owing partly to a further liberalization of the law in 1990 and partly to the IRCA amnesty, the United States now accepts more immigrants than all other industrialized nations combined. (Upwards of 80 percent are persons of color: so much for the myth that U.S. policy is racist.) Proponents of further immigration argue that the current influx is actually lower than the 1900-1920 peak when considered as a percentage of the U.S. population. They are right: it was 1 percent of the population then and about one third of 1 percent now. But it is still a lot of people.

And the law is full of holes. A majority of those who get family-reunification visas (235,484 in 1992) come in with no numerical restriction at all: for them, at least, immigration is a form of entitlement program. Others game the system by forging documents, faking job histories and hiring smart American lawyers to get them eligible for resident visas and green cards. This is known in federal jargon as "adjusting status," and in most years it works for more than 200,000 immigrants. The asylum hustle is the newest wrinkle. By claiming political asylum, would-be immigrants circumvent the normal rules and, because the jails are full, are usually freed to stay and work. Many simply vanish into the underground economy. "We didn't [expect] the asylum problem," says Lawrence Fuchs. "We thought of it as the ballerina in the tutu saying, 'I defect, I defect.'"

Immigration policy is simultaneously a statement of America's relationship with the rest of the world and a design for the national future: it is and probably should be, a mixture of altruism and self-interest. Current U.S. policy contains elements of both—but it is a blurry, heavily brokered policy that has been cobbled together over the decades to reflect the changing fads and competing interests of domestic politics. A purely selfish policy would accept only immigrants who could contribute to economic or social progress. But this idea—awarding visas on the basis of talent or skill—has always been opposed by organized labor and other groups, and it is a minor feature of today's law, totaling about 140,000 out of 810,000 visas annually. Conversely, providing a haven for refugees is in the best tradition of the American conscience and the United States has taken a lot of refugees since 1970—1.5 million Vietnamese, Laotians, Cambodians, Cubans, Russians and other oppressed nationalities. But the vast majority of those who get here are ordinary folks pursuing a better life—and although this, too, is part of the American tradition, the question can and should be asked: What's in it for us? What does all this immigration do for America and Americans? Julian Simon, a University of Maryland economist, says he knows the answer: more immigration means more economic growth—more wealth and more progress for all Americans, period. Pat Buchanan, the talk-show host and erstwhile presidential candidate, has a different answer: more immigrants mean more social friction and the slow erosion of the English-speaking, hybrid European culture we call "American."

There is a third issue as well: how many people, really, can the territorial United States support? Immigration now produces about a third of U.S. population growth, and projections for the future range from a population of about 383 million in 2050 to 436 million by the year 2090. All of these projections are shaky—based on complex assumptions about birth and death rates as well as immigration policy. Some environmentalists (and many Californians) think the United States should immediately halt immigration to protect the ecosystem and the quality of life. Fuchs says his commission has consulted environmentalists and population experts. "They persuaded us that the population growth is terribly serious on a planetary scale, but not in the United States," he says. "So migration to the United States perhaps has a beneficial effect on the global environmental problem." Still, Congress took no notice of this question when it voted to increase immigration in 1990—and given the wide disparity of current views, picking the "right" number of future Americans is ultimately a combination of taste and guesswork.

The further question is one that troubles Pat Buchanan and many others: can America absorb so many people with different languages, different cultures, different backgrounds? The answer, broadly, is yes—which does not mean there will be no ethnic friction and does not mean that assimilation is easy for anyone. Assimilation is a generational thing. The first generation—the immigrants themselves—are always strangers in the land. The second generation is halfway between or (kids will be kids) rejects the immigrant culture. The third generation is hyphenated-American, like everybody else, and begins the search for Roots. The tricky part, which worries Fuchs considerably, is that America's "civic culture" is unique in all the world. It is the belief, as embodied in the Constitution and our political tradition, "that it is individual rights, not group rights, that hold this country together." So here is the question for all of us, native-born and immigrant alike. At what point do policies like affirmative action and minority-voting rights stop being temporary remedies for past injustices and start being permanent features of the system? The whole concept of group rights, as Fuchs says, is tribalism—the road to Bosnia, not East L.A. And that, surely, is not what Israel Zangwill had in mind when he described America as the crucible of a new civilization.

LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Immigration

Lesson 6

(OPTIONAL — FOR MORE ADVANCED CLASSES)

(Adapted from Bill of Rights in Action series, Winter 1987. Constitutional Rights Foundation, 601 S. Kingsley Dr., Los Angeles, CA 90005 (203) 487-5590. Used with permission.)

Objectives

Students will:

- Debate the merits of creating second-degree citizenship.
- Identify the pluralistic nature of society in a present and future setting.

Materials

Copies of handouts:

- 2087: A Time for Second-Degree Citizenship
- Second-Degree Citizen Amendment

Time Required

1 class period.

Procedures

■ **Pass out** the first handout, which gives background information to the activity in which students will consider the Second-Degree Citizenship Amendment and its impact on American life and values.

■ **After students have read** the material, ask the following questions.

1. Why did the United States pass the Immigration Act of 2076?

   Because the population of the U.S. had decreased so drastically. The law increases the number of immigrants allowed into the country from 450,000 to 1.5 million.

2. Why do the supporters of the proposed naturalization law of 2087 want to create two classes of citizens?

   New immigrants from Latin America and Asia are becoming the majority population. Their traditions and language are becoming more prominent. The proposed law would help preserve "American traditions" such as the European-derived holidays.

3. Do you think it is right for a nation to insist on preserving the traditions and culture of a once dominant group, or should these things be allowed to change with a changing population? Explain.

   This calls for opinions.

4. If you were directly related to the Pilgrims, how would you feel about the Second-Degree Citizenship Amendment?

   This calls for opinions.

5. If you were directly related to Africans forced to work as slaves in the United States, how would you feel about the Second-Degree Citizenship Amendment?

   This calls for opinions.

6. If you were a person who got your citizenship in 2085, how would you feel about the Second-Degree Citizenship Amendment?

   This calls for opinions.

7. If you were a Native American Indian, how would you feel about the Second-Degree Citizenship Amendment?

   This calls for opinions.

8. If you were an immigrant to the U.S. from Mexico, how would you feel about the Second-Degree Citizenship Amendment?

   This calls for opinions.

■ **Pass out** the proposed amendment and have students review it and then assign them in small groups of four to answer the questions that follow.

2087: A Time for Second-Degree Citizenship

Directions: Read this handout, and then answer the questions that follow. In the next handout, you will work in small groups to consider a constitutional amendment to create second-degree citizenship.

The year is 2087. The United States is celebrating the tricentennial of the Constitution. But, since the last time Americans held such a celebration back in 1987, the world and the United States have changed a great deal. This description of the world and the United States 100 years from now is based on projections, informed assumptions from several sources and some fantasy. Some of the population trends identified in the article are already under way. They may or may not result in the problems forecasted in this hypothetical, futuristic speculation.

The Decline of the West

Despite large numbers of immigrants coming to the west from the third world, starting in the 1970s, most western democratic nations began to experience a decline in population because of reduced birth rates. More specifically, married couples were not even replacing themselves with two children. Consequently, each succeeding generation produced even fewer offspring. In 1985, the western democracies had a combined population of 732 million persons. Today, in 2087, about 580 million people live in the west.

While the number of people in the west was declining, the rest of the world experienced a population boom. Russia and the other former Soviet states saw their populations increase from 390 million in 1985 to 520 million in 2087. (There was an attempt in the 1990s for Russia and the other former soviet states to break from communism to establish democratic governments, but this was repressed in the late 1990s with a brutal use of force.)

The poor "Third World" nations exploded with people during this time: from 3.6 billion (1985) to 9.5 billion (in 2087). The "population superpowers" of today are countries like China, India and Mexico.

Currently, in 2087, the Third World and former Soviet bloc countries make up 95 percent of the world's population. The west, which had 15 percent of the world's people in 1985, now has only 5 percent in 2087. The U.S. share decreased from 5 percent to .02 percent during the same period of time.

For centuries the western nations dominated world economic development, technology and commerce. Moreover, western culture and values, such as political freedom, were admired by the rest of the world. Democracy became the shining model of government. But now, in 2087, these conditions have changed.

The western democracies, with their shrinking 5 percent of the world's population, have become like medieval castles, isolated and surrounded by the forces of poverty and despair. With their declining populations and smaller tax bases, these nations are finding it difficult to maintain large enough armies and the sophisticated weapons systems necessary to defend their ways of life.

A Changing America

America's population reached its peak in 2030 with 290 million people. After that, the population decline experienced earlier by most western European nations began to occur here. Birth rates went down because of more women working, delayed marriage, an increase in divorces, fertility problems, and many other factors.

By 2050, the number of people in the United States had decreased by 5 million and continued falling, causing some serious economic problems. The demand for new houses and other types of construction diminished. Many manufacturing and retail firms went out of business. The American automobile industry disappeared entirely. With fewer workers in the labor force to pay taxes, Social Security and Medicare benefits had to be cut for large numbers of elderly people.

Over the next 20 years, the population decrease worsened. The U.S. lost a net total of 10 million people. America also apparently entered a period of permanently low economic growth.

In 2076, the tricentennial of the Declaration of Independence, the United States made a difficult and pivotal decision. Congress passed and the president signed a law that increased the number of immigrants legally allowed into the country each year from 450,000 to 1.5 million. Americans realized that without more people, the country would become progressively weaker, both economically and militarily.

The Immigration Act of 2076 has now been operating for more than 10 years. During this time most of the new immigrants have come from third World countries, mainly Latin America. They are hard working and have revived the country, yet many are poorly educated, unskilled and unfamiliar with the way democracy works. Because the new immigrants have a higher birth rate than native Americans, the U.S. population is beginning to grow again.

The new immigration policy is starting to change the face of America. Hispanics have replaced Afro-Americans as the largest ethnic minority in the country. They now are a majority population group in several states, including California and Washington State. Nationwide, Americans of European ancestry account for little more than 50 percent of the population. If current trends continue, this group will shortly become a minority in American society.

The changing population of America has brought about some profound consequences. The recent immigrants seem very reluctant to give up their native languages and cultures. In some cities like Miami, San Francisco and Seattle where immigrants are highly concentrated, locally elected school boards have required classes to be taught only in Spanish or Chinese. Some city councils with a majority of newly naturalized citizens have demanded that more municipal jobs go to immigrant workers. In Congress, bills have been introduced calling for ethnic festivals to be declared national holidays. Traditional American holidays, like Thanksgiving Day and even the Fourth of July, seem to be fading in importance. America in 2087 is rapidly becoming a nation of diverse language, cultures and traditions.

The Second-Degree Citizenship Law

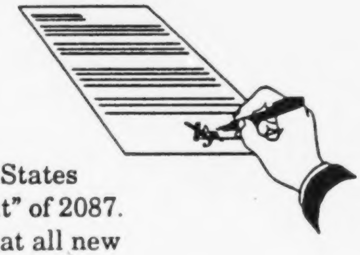
In 2087, a newcomer to America may apply to become a naturalized citizen after living legally in the country for five years. To become a full citizen an immigrant must pass an English literacy test as well as an exam in American history and government; then he or she must take an oath of allegiance to the United States.

Concerned that the traditional way of life of the majority population is gradually disappearing with the changing population, some members of Congress have proposed a new naturalization amendment to the United States Constitution. Basically, the amendment would create two degrees of citizens. The first-degree citizen would include all current citizens, native and naturalized. They would continue to enjoy all the traditional rights and privileges of Americans. Second-degree citizens would consist of all immigrants entering the country after passage of this amendment. They would be guaranteed many rights, but denied others such as the right to vote.

The idea behind this proposed amendment isn't entirely new to American history. At the Constitutional Convention in 1787, George Mason from Virginia said he was all for "opening a wide door for immigrants," but he did not want to "let foreigners and adventurers make laws for and govern us." Supporters of the "Second-Degree Citizen Amendment" believe that it is necessary in order to preserve American traditions and political heritage established by the Founding Fathers at Philadelphia in 1787.

1. Why did the United States pass the Immigration Act of 2076?
2. Why do the supporters of the proposed naturalization law of 2087 want to create two classes of citizens?
3. Do you think it is right for a nation to insist on preserving the traditions and culture of a once dominant group, or should these things be allowed to change with a changing population? Explain.
4. If you were directly related to the Pilgrims, how would you feel about the Second-Degree Citizenship Amendment?
5. If you were directly related to Africans forced to work as slaves in the United States, how would you feel about the Second-Degree Citizenship Amendment?
6. If you were a person who got your citizenship in 2085, how would you feel about the Second-Degree Citizenship Amendment?
7. If you were a Native American, how would you feel about the Second-Degree Citizenship Amendment?
8. If you were an immigrant to the U.S. from Mexico, how would you feel about the Second-Degree Citizenship Amendment?

The Second-Degree Citizen Amendment



Directions: Below is a list of rights (A) that all adult immigrants will have upon legally entering the United States under the proposed "Second-Degree Citizen Amendment" of 2087. Next to this list is another (B) including those rights that all new immigrants will be denied permanently.

A. Rights Guaranteed

1. No discrimination in employment
2. Union membership
3. Unemployment benefits
4. Social Security/Medicare
5. Welfare benefits
6. Public housing
7. Enlistment in the armed forces
8. Admission to public universities
9. Public schools for children
10. Ownership of property
11. No discrimination in public accommodations
12. All Constitutional rights except those listed under B

B. Rights Denied

1. Voting at all levels of government
2. Election to any public office
3. Appointment to any public office
4. Affirmative action in employment
5. Appointment to any U.S. military academy

Imagine that you have been appointed to serve on a special "Citizen's Advisory Group" by a member of the U.S. House of Representatives to help Congress decide whether to support or oppose the "Second-Degree Citizen Amendment." The purpose of your group is "to assess the impact the proposed amendment will have on the United States and its traditions," by answering questions submitted by the Congressional Representative.

To complete your task, follow these steps:

- Divide into groups of four students. One student will act as chairperson, one as recorder, another as spokesperson, and the fourth as writer. The writer will order and write up the recorder's notes for presentation by the spokesperson.
- Review the reading and the list of rights above.
- Discuss and answer the following questions:
  1. What effect might the proposed amendment have on:
     - The U.S. economy.
     - America's traditional open attitude toward immigrants and naturalized citizens.
     - Social harmony between different ethnic groups in the United States.
     - The value system of the U.S. Constitution.

     (**Note**: Each group member must identify at least one effect for each category.)
  2. If such an amendment were adopted, should any rights be dropped or added to either side of the lists? Why?
- Develop a brief presentation on your findings for the spokesperson to give to the rest of the class.
- After all the groups have given their presentations, discuss the following question: Is this Amendment a sound idea for America in the year 2087? Why or why not?

Animal Rights

Introduction

Description

This multidisciplinary unit examines the controversy about the use of animals in medical research. Students survey their peers and other groups to assess opinions about whether animals have rights that should be protected by law. Using the format of a legislative hearing, the students research different points of view and advocate those points of view by playing the roles of members of interest groups and legislators. Role playing a legislative debate provides students an opportunity to increase their understanding of the purpose and power of legislatures to make laws and to debate matters of public policy. Students draft legislation, and conduct a general legislative session to try to pass a bill during the time allotted. If they do not succeed, as in real life, the legislature adjourns. An extension lesson is a simulated "Meet the Press" activity, in which students ask and answer questions regarding animal rights in society today.

Use of Outside Resource Persons

A researcher and/or animal rights activist could be invited to speak to students. Information about organizations with speakers is listed below. A legislator or aide could describe to the students how debate is used in the formulation and development of laws.

Time Required

4 to 7 class periods.

Overall Outcomes

Teachers will discover they can readily use their reading, language arts, social studies, and science periods to teach this unit, as the integrated skills meet common student learning objectives in all four subject areas.

Reading and Language Arts Outcomes

Students will:

- Read newspaper articles to determine points of view.
- Analyze newspaper articles in small, cooperative groups.
- Determine where points of view fall on a values continuum.
- Write a proposed bill for a mock legislative debate.
- Demonstrate skills in listening critically.
- Demonstrate skills in extemporaneous speaking.
- Write letters from diverse perspectives.

Social Studies and Science Outcomes

Students will:

- Use debate to formulate the development of laws.

- Practice compromise and collaboration to reach a common goal.
- Ask questions, offer criticism, and/or suggest modifications as a result of critical listening.
- Weigh the costs and benefits of proposals for the public good.
- Role play the legislative process, increasing their understanding of the purpose and the power of legislatures to make laws.
- Practice debating matters of public policy.
- Use statistics to calculate information from a survey.
- Develop possible conclusions as the result of analyzing survey data.
- Be able to cite costs and benefits of animal research and animal rights.
- Identify major players in the current debate about animal rights and describe their similarities and differences.
- Recognize the complexities of political and legal issues.
- Recognize the human dimension of political and legal affairs.
- Gain an understanding of the purpose of laws.
- Learn democratic procedures for creating and changing laws.
- Develop an appreciation for legislative debate as a way to formulate law.

Critical and Creative Thinking Outcomes

Students will:

- Identify central issues of a problem.
- Identify relevant information.
- Formulate appropriate questions.
- Distinguish fact, opinion, and reasoned judgment.
- Create reasonable alternatives.
- Predict probable consequences.
- Reflect upon their actions, products, and beliefs.

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Cohen, Daniel. *Animal Rights: A Handbook for Young Adults*. Brookfield, CT: Millbrook Press. 1993. Discusses animals as a food source, as the objects of hunting and trapping, as pets, and as the subject of the animal rights movement. 128 pp.

Curtis, Patricia. *Animal Rights: Stories of People Who Defend the Rights of Animals*. New York: Four Winds Press. 1980. Focuses on seven individuals who are working to defend and extend the rights of animals including pets, wild animals, zoo animals, laboratory animals, and others. 148 pp.

Field, Shelly. *Careers as an Animal Rights Activist*. New York: Rosen Publishing Group. 1993. Discusses the exploitation of animals and describes various careers and volunteer opportunities associated with the animal rights movement.

Foundation for Biomedical Research. *Animal Research and Human Health*. Three monographs. 1992. "Caring for Laboratory Animals," "The Use of Animals in Product Safety Testing," "Understanding the Use of Animals in Biomedical Research."

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Foundation for Biomedical Research. "What If—There Were No Animal Research?" 1988. (Booklet).

Foundation for Biomedical Research. "Who Cares About Laboratory Animals?" 1988. (Booklet).

Lutherer, Lorenzo OHO/Simon, Simon, Margaret Sheffield. *Targeted. The Anatomy of an Animal Rights Attack*. Norman: University of Oklahoma Press. 1992.

Newkirk, Ingrid. *Kids Can Save the Animals: 101 Easy Things to Do* and *Save the Animals: 101 Easy Things You Can Do*. New York: Warner Books. 1990 and 1991. Two books, the first one is directed at elementary children and suggests ways children can help save animals. The second is more middle school in reading level and interest. Newkirk is with People for the Ethical Treatment of Animals. (PETA).

Orlans, F. Barbara. *In the Name of Science Issues in Responsible Animal Experimentation*. New York: Oxford University Press. 1993. 297 pp. Comprehensive review of the animal rights debate from a moderate perspective. Author is founder of the Scientists Center for Animal Welfare, and advocates compromise.

Patterson, Charles. *Animal Rights*. New Jersey: Enslow. 1993. Discusses the ways in which animals are used from medical research, food, education, and entertainment, and presents the views of some people concerned with the treatment of animals. 112 pp.

Pringle, Laurence P. *The Animal Rights Controversy*. San Diego: Harcourt Brace Jovanovich. 1989. Presents viewpoints of both scientists and animal rights groups. 103 pp.

Steffins, Bradley. *Animal Rights: Distinguishing Between Fact and Opinion*. San Diego: Greenhaven Press. 1989. Presents opposing viewpoints on the treatment of animals. Includes critical thinking skill activities. 32 pp.

Strand, Rod and Patti. *The Hijacking of the Humane Movement*. Wilsonville, OR: Doral. 1993. 174 pp. Criticizes the animal rights movement as an antidemocratic, New Age cult.

Switzer, Ellen. *There Ought to Be a Law!* New York: Atheneum. 1972. Explains how laws are made at the national, state and local levels. Discusses some specific laws, including the "Connecticut Dog Bill." One chapter describes the passage of this law, which addressed problems with how dogs were being supplied for medical research laboratories. The arguments for both sides are discussed, as well as provisions of the law.

Washington Association for Biomedical Research. "Animal Research, Fact v. Myth." 1988.

Washington Association for Biomedical Research. "Animal Research for Animal Health." 1989.

Washington Association for Biomedical Research. "Research Breakthroughs in Washington State." 1992.

More Books

Available from Progressive Animal Welfare Society (PAWS), 15305 44th Ave. West, Lynnwood, WA 98046. 206-787-2500.

Adams, Richard. *The Plague Dogs*. $4.95. 461 pages. Fictional account of two dogs who escape from an experimental research station.

Hall, Rebecca. *Voiceless Victims*. $17.95. 288 pages. Comprehensive look at animal abuse and what you can do.

Kotzwinkle, William. *Dr. Rat*. $3.95. 215 pages. Fictional fable indicting man's use of laboratory animals.

Medical Research Modernization Committee. *A Critical Look*. 17-page pamphlet examining and explaining animal research.

Opposing Viewpoints. *Is Animal Experimentation Justified?* $4.50. Gives arguments for and against animal experimentation.

Reusch, Hans. *Slaughter of the Innocent*. $4.95. 446 pages. Discusses the dangers of vivisection for humans.

Ryder, Dr. Richard. *Victims of Science*.

Sharpe, Dr. Robert. *The Cruel Deception*. $10.95. 288 pages. Details arguments against using animals to find human disease cures.

Vyvyan, John. *The Dark Face of Science*. $10.95. 167 pages. Details about vivisection and damage done to animals.

Vyvyan, John. *In Pity and In Anger*. $9.95. 167 pages. Condemns the use of animals in science.

National Organizations

Many of these organizations have other books and videos available for sale or loan.

The Animal Legal Defense Fund, 1363 Lincoln Ave., San Rafael, CA 94901, 415-459-0885

National Anti-Vivisection Society, 53 West Jackson Blvd., Suite 1552, Chicago, IL 60604-9810, 1-800-888-6287

National Foundation for Biomedical Research, 818 Connecticut Ave. NW, Suite 303, Washington, D.C. 20006, 202-457-0654

People for the Ethical Treatment of Animals (PETA) PO Box 42516 Washington, D.C. 20015, 301-770-7444

Physicians Committee for Responsible Medicine (PCRM) PO Box 6322, Washington, D.C. 20015, 202-686-2210

Regional Organizations

Both PAWS and the Washington Association for Biomedical Research have speaker's bureaus.

National Animal Interest Alliance, PO Box 66579, Portland, OR 97290-6579, 503-761-8962

Progressive Animal Welfare Society (PAWS) 15305 44th Ave. West, Post Office Box 1037, Lynnwood, WA 98046, 206-742-5711

Washington Association for Biomedical Research, 200 Broadway, Seattle, WA 98122-5323, 206-621-8556

VISUAL/SPATIAL
LINGUISTIC
INTRAPERSONAL
INTERPERSONAL
LOGICAL/MATHEMATICAL

Animal Rights

Lesson 1

Objectives

Students will:

- Take a survey regarding animal rights and compile the data for the class.
- Review two professional surveys regarding animal rights, compare the results with their class survey, and suggest possible conclusions one could draw from these surveys.
- Read news reports about animal rights and evaluate them.

Materials

Copies of handouts:

- Excerpt from Law Review article (more advanced classes)
- Student survey (1 per student)
- Surveys from California and Minnesota (1 per student)
- Newspaper articles

Time Required

1 to 2 class periods.

Procedures

■ **Introduce the unit** by telling students they will be studying animal rights, specifically the use of animals in medical research. Ask students what comes to mind when they think of "animal rights." List words on the board. (E.g. fur coats, mice in research labs, hunting, etc.) Introduce the word "vivisection." This means experimentation by operating on living animals. Note that most of us have strong feelings about animal rights. Tell students that later in the unit, they will be legislators and concerned citizens who will work to pass a law about animal rights. Before that, they will learn more about the different points of view people bring to the issue.

If you have a more advanced class, introduce the unit by putting the excerpt from the Law Review article on the overhead and reading it aloud. Ask for student reactions.

■ **Tell students** that as legislators and concerned citizens, they need to know how the public feels about animal rights. Tell them they will begin their investigation into public opinion about animal testing/animal rights by assessing their own beliefs on this issue.

■ **Pass out the survey**, and tell students they should keep their personal views confidential at this time and fill out the survey quickly. Give students about 5 minutes to take the survey. Collect them. (Students will compile the results later.)

■ **Hand out the surveys** from California and Minnesota. Spend a few minutes giving students time to read and analyze the surveys individually. Then ask students to share with a partner what they conclude from the surveys. (To help younger students work with these surveys more effectively, ask pairs of students to illustrate the information on a pie or line graph. Choose one type so all the graphs are portrayed via the same graphic. Have them state the question at the top of a piece of tagboard so it can be easily read and use colors to highlight the information on the graph. Display these in the room while the students pair/share.)

- **Share observations/conclusions** with the whole class. Ask, "Do you think the results of our class survey will be very different on the issue of ... ? (For example, laws protecting animals from inhumane treatment.) Read the statement: "Animals are just like humans ..., etc. Probe for reasons students think they'll either mirror or vary from the California or Minnesota survey results.

- **Compile the class survey**. One quick way is to divide the class into 6 groups, A through F, 1 for each question. Divide the survey papers into 6 sets, identifying each set as A, B, C, D, E, or F. Assign A group to compile the responses to question one, B group the second question, etc. When A group has finished with their set of papers, they should pass them to B group; B group should pass to C, etc. Fairly quickly, the six questions should be tallied and ready to share as percentages. (You may need to help your students convert raw numbers into percentages. For example, if you have 30 students and 12 agree with a statement, that would be 40 percent—reached by dividing 12 by 30.)

- **Compare the results** of your survey with the national surveys. Discuss reasons why there are similarities and differences. (Could age be a factor?) Ask, "If you were a legislator, and you received these surveys from your district, how would you interpret your constituents' feelings about the issue of animal testing/animal rights?"

- **Tell students**, "Soon some of you are going to be role playing the part of a representative who will be debating this issue on the State House floor. Others of you will represent groups and citizens who are concerned about this issue, and want to propose legislation to regulate the use of animals in research."

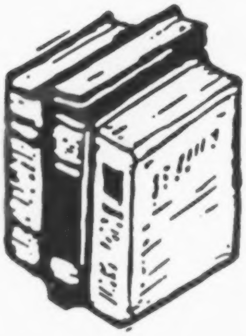
- **Hand out** the newspaper articles. Before students begin reading, discuss the issue of bias in news reporting. Remind students of the earlier discussion about the strong feelings that many of us bring to the issue of animal rights and welfare. Suggest that as they read the news articles, they should be aware of the different interest groups involved and that these groups all want to convince the public to agree with their point of view. Point out that even "objective" news reporters have their own point of view, which may be reflected in the reporting. Tell students to be on the lookout for bias or lack of objectivity in the articles, and to evaluate each author's point of view. You may also want to remind students that as young people they are targeted by groups both in favor of and against animal rights, who want to influence their views.

- **Depending on the reading level** of your students, you may either read the articles aloud together in class and discuss (the first NPR interview works especially well if read aloud) or use the jigsaw method (for more advanced students). If you jigsaw, student groups of five work best. Give each group a packet of readings. Have students decide an equitable way to divide up the reading so they can meet and share information. Encourage students to pre-read before the next class.

Extension

Ask students to construct a multicolored graph illustrating the data from the class survey, perhaps comparing it with the national surveys.

Law Review Article



It is open to debate when, and if, research on animals is justified as a means of acquiring medical knowledge to benefit humans. At the same time, it is clear that the level of pain that animals are frequently subjected to and the trivial nature of some of the experiments are unacceptable. Animals must be provided with more respect than they are currently receiving inside research facilities.

In a system in which animals do not have legal rights, the question of how to ensure adequate protection of animal interests in the laboratory is problematic. One possible answer is to promote legislation ... that will recognize animals as having certain rights. Another is to turn to the federal government for improved regulations on the use of laboratory animals.

The imposition of public control over laboratory research has raised concerns on the part of the scientific community about intrusions into academic and scientific freedom. This challenge to public control as a threat to the autonomy of the scientist has been largely successful in Congress.

— Karen L. McDonald, *Creating a Private Cause of Action against Abusive Animal Research*. Univ. of Penn. Law Review, 134 U. Pa. L. Rev. 399, Jan. 1986.

Student Survey

Check the answer that best fits your beliefs.

1. Do you think current laws protecting animals from inhumane treatment in our society go too far, don't go far enough, or are adequate now?

   ☐ Too far ☐ Adequate ☐ Not far enough ☐ Don't know

2. Do you agree or disagree with the following statement: "Animals are just like humans in all important ways."

   ☐ Agree ☐ Disagree ☐ Don't know

3. Do you generally favor or oppose the wearing of clothes made from animal furs?

   ☐ Favor ☐ Oppose ☐ Don't know

4. Do you generally favor or oppose the hunting of animals for sport?

   ☐ Favor ☐ Oppose ☐ Don't know

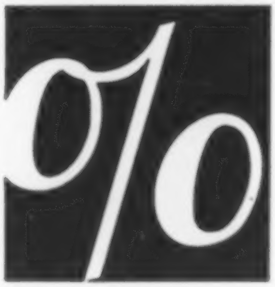
5. Testing cosmetics on animals is always wrong.

   ☐ Agree ☐ Disagree ☐ Don't know

6. Animals should not be used for medical research.

   ☐ Agree ☐ Disagree ☐ Don't know

California Survey



Do you think laws protecting animals from inhumane treatment in our society go too far, don't go far enough, or are adequate now?

Too far	17%
Adequate	46%
Not far enough	30%
Don't know	7%

Do you agree or disagree with the following statement: "Animals are just like humans in all important ways."

Agree	47%
Disagree	51%
Don't know	2%

Do you generally favor or oppose the wearing of clothes made of animal furs?

Favor	35%
Oppose	50%
Don't know	15%

Do you generally favor or oppose the hunting of animals for sport?

Favor	41%
Oppose	54%
Don't know	5%

Source: *Los Angeles Times* Poll of 1,612 adults taken nationwide Dec. 4-7, 1993. Margin of sampling error is plus or minus 3 percentage points. *Los Angeles Times*, December 25, 1993.

Minnesota Survey

Testing cosmetics on animals is always wrong.

Agree	50%
Disagree	43%
Don't know	7%

Animals should not be used for medical research.

Agree	22%
Disagree	74%
Don't know	4%

Source: *Star Tribune*/WCCO-TV Minnesota Poll of 1,000 adults statewide Nov. 17-25, 1993. Margin of sampling error: no more than 3.1 percentage points, plus or minus. *Star Tribune*, January 18, 1993.

Human Health Benefits Through Animal Research

NPR, Weekend Edition
Saturday, July 17, 1993

Susan Stamberg, Host: Animal rights activists can be passionate, often disruptive, about their cause. They protest against fur coat wearers, cosmetic industry experiments with animals, and against scientific researchers who use animals in medical studies designed to help humans. They say the animals are being misused. None of this activism mattered very much to Nora Rump of Arlington, Virginia, until the day her infant son, born with damaged lungs, was saved by a technology that extensively employed newborn lambs for testing and training. Now, Ms. Rump heads a group called Thank You Research. They have a simple goal—to remind medical researchers that someone does support what they do. Nora Rump is here in our studio. Welcome. Thanks for coming in.

Nora Rump, Thank You Research: Thank you. I'm delighted to be here.

Stamberg: The group does just one small and extremely simple thing. Tell what that is.

Ms. Rump: We connect patients with researchers. Patients sign simple thank you cards. They slip in a photo of themselves, their child, whatever, and we send the card to a medical researcher who uses animals in his or her work.

Stamberg: Why do you need a group for this? I know it's not a particularly formal group that you've got but why not just the simple individual thank you card because you felt that way because you're happy to have your son?

Ms. Rump: Well, I did that, but that was just one mom to one researcher. What I would like is for every researcher in the country to have one of our cards above his or her lab bench.

Stamberg: What kind of reaction have you had from the researchers when they get these cards?

Ms. Rump: Oh, they're just delighted. They send us letters back and say, no one bothers to say thank you and you did. You recognized that our work was important and it makes all the difference in the world to us.

Stamberg: I'm sure you're aware of all the arguments on the other side. The animals rights people, who say essentially that it is immoral to use animals for purposes like this and that humans don't have dominion over animals, therefore, we shouldn't exercise the so-called rights of ours in the name of scientific research. How do you respond to that?

Ms. Rump: I will do anything to preserve the health of my children. I have witnessed the agony of the loss of a child's life. My brother lost his baby, to Sudden Infant Death Syndrome, who was six weeks old and I want research to continue so that answers can be found to SIDS, to pediatric AIDS, adult AIDS, cancer, on and on.

Stamberg: There's another argument and that is that everything is not done on the part of researchers to avoid going to the use of animals, that there are steps that could be taken in advance and alternatives to the use of animals, but it's so much easier their way.

Ms. Rump: The researchers that I have talked to assure me that they go to great lengths to avoid using animals. For one thing, it's much more expensive to use animals, but I know that there are no substitutes for a living being. When my son needed this lung bypass, it was just the most complicated thing I have ever seen. It involved every system of his body—his heart, his lungs, his brain, his circulation. There's no way that that can be modeled on a machine.

Stamberg: Can you explain to us how and what was the animal connection in the case of your son?

Ms. Rump: He was born with severely damaged lungs and would have died without extra corporeal membrane oxygenation (ECMO). All the people who treated my son, first learned how to take care of a being on ECMO by training on lambs and the technicians and the nurses and the doctors take care of that animal while it's on this machine, and at some point during the training, an accident is deliberately caused so that when there is an emergency, when there is a power failure, when there is a cut in the circuit, when there's a blood clot, when they're treating a baby and an emergency happens, they'll know what to do because they will have seen something like that before. One never chooses to be sick. The use of animals in medical research is a necessity and it's not something where we have a choice or even have room to kind of sit around and argue about it.

Stamberg: Ms. Rump, let me ask you something. You got $1,000, as I understand it, in start-up money for your group and it comes from a foundation that supports biomedical research. So, to what extent are you their creation?

Ms. Rump: I went to them. I have not been used by anybody. I've gotten so much from animal research and I've seen what the lack of an answer can do. I see it when I look into my mother's eyes. She has Alzheimer's. She lives in this world of gray confusion. I want something to come out of research to give her back her memory.

Stamberg: Have you had to deal with reaction from the animal activist community?

Ms. Rump: No, I have not.

Stamberg: You can expect to have some after this conversation.

Ms. Rump: Well, I guess I'll deal with it if it comes. To me, it is just so patently obvious that medical research is vitally important to the interest of everyone. We should be showing them some support and instead, most of us are silent and the animal rights activists are outside their labs and now outside their homes, picketing their homes, throwing paint on their cars, leaving packages done-up to look like bombs. It seems to me, if I were that researcher, I'd want to stay at home and hide under my bed, and I guess that's exactly what the animal rights activists want. But what I want, and what anyone who's concerned about his health or the health of his children should want, is for those researchers to drive to work full of confidence and knowledge that what they do is right and honorable.

Stamberg: Nora Rump is founder of Thank You Research, a support group for medical researchers who use animals in their experiments. How is your boy?

Ms. Rump: He's doing great.

Stamberg: How old is he?

Ms. Rump: He's four and a half. He's just a wonderful kid. He's got this full and sweet life ahead of him and research gave him that.

Stamberg: Thank you very much.

Pet Projects Keep Woman on Short Leash

By Dale Moss
The Courier-Journal
October 1, 1993

Rina Van Kleef had yet to recall the fetal pig she'd brought home and named instead of dissecting it in school.

But she had just scoffed at Vice President Al Gore's commitment to the planet. "How can he be an environmentalist and have four kids?" she asked.

It was at that point a fly dived into my cherry Kool-Aid.

"It's alive," she said, grabbing the glass and pulling the bug from it. "No, it's dead," she corrected, the fly falling from her fingertips into a ball.

"No, no, it's alive," she said, the fly convulsing on her kitchen table. It wears on her, Van Kleef said, to protest so much and to protect so much. Not eating meat, not wearing lipstick, not watching commercial TV, not using pesticides—it's not much fun.

"People don't realize what a sacrifice I make," she said. "It's a moral dilemma. Sometimes I wish I had not gotten into this. Sometimes it's hard to be happy. I know too much." We're beginning to know more about Van Kleef, 28, of Jeffersonville, a registered nurse.

On Sept. 18, she handed homemade fliers to owners of the pets in a fund-raising dog walk at Vissing Park. The event's beneficiary, the Muscular Dystrophy Association, pays for medical experiments involving healthy dogs, Van Kleef claimed on her pink sheet.

"I was in the library all week" before the walk, she said. "I wasn't trying to be malicious. I just want people to be educated and to make decisions for themselves."

MDA denies not only Van Kleef's contention about the dogs but also her claim that its officials asked her to leave the public park.

Van Kleef said she left to avoid a confrontation. In July, Van Kleef revived the newsletter of the Clark County Humane Association, a small group she had joined a few months before. Now its circulation has more than doubled, to 1,000. "She's definitely been a boost to the Humane Association," said Jan Wheatley, who directs the Jeffersonville-Clark County Animal Shelter. "She's got lots of energy." Wheatley, who has also sometimes felt lonely atop the animal-rights soapbox, appreciates Van Kleef's concern and commitment. But as a public official, Wheatley couldn't condone Van Kleef's actions the first time she got involved in animal-rights issues. Van Kleef is at the fore because about five years ago, she discovered that a research lab had somehow gotten her dog. Van Kleef stole back what she said had been stolen from her back yard.

Since then she has adopted other animals, including six cats that had belonged to an AIDS patient of hers who died. She's found homes for 16 others and rescued/stolen a few more from owners she found abusive. No one has complained to Wheatley about Van Kleef.

Van Kleef knows she's seen as uncompromising. But she insists she has cut her principles from the "troubled middle."

She'd never wear fur, but she'd never bomb a fur-coat factory. She'll continue to monitor animal research, but she acknowledges some is necessary and is handled ethically.

She protests the absence of animal control in Harrison County, but she's also agreed to help set up a shelter.

It's too late to turn back, but there'll always be some regret. "Over the years," Van Kleef said, "it's just been one thing or another that's preyed on my life."

Creatures Great and—Equal?

Activists Have Changed the Way We Look at Everything from Mink Coats to Steaks. But as They Claim Broader Rights for Animals, Some Wonder Where to Draw the Line.

By John Balzar, *Times* Staff Writer
Los Angeles Times
December 25, 1993

In a century and a half of activism, the animal protection movement has transformed the national consciousness, altering evermore how mainstream Americans regard other creatures.

Today, the movement's enthusiasm and aims are expanding as never before—but so are its troubles, including quiet but persistent grand jury crackdowns and rising debate about its idealized dreams for America, its tactics, its antics and its emotionalism.

Several million Americans are members or supporters of animal protection organizations, from the workaday men and women of humane societies to the more militant—or as they see themselves, visionary—animal rights crusaders. They are joined together by one of the most practical and sublime meditations of our modern culture: If we are all animals, what do the mighty owe the meek?

A new *Los Angeles Times* poll found that half or more Americans surveyed agree with two principal tenets of the animal protectionist cause—they are opposed to sport hunting and the wearing of fur.

But the federal government, the scientific research establishment, ranchers, breeders, furriers, the tradition-minded of the "wise use" resource movement and a good number of average citizens say they believe that the notions of animal protectionists have gone beyond reason and their actions too often have gone beyond the law.

Looking back, it is easy to inventory the gains of animal protectionists:

- Wringing out of the cosmetics industry pledges to abstain from using animals in tests.
- Advancing the cause of vegetarianism.
- Stigmatizing fur clothing and ivory and exotic leathers, as well as veal.
- Pushing hunters closer to the social margins.
- Challenging the traditional use of animals in scientific experiments.
- Forcing the tuna industry to save dolphins.
- Clouding many people, particularly children, with doubts about circuses, zoos, horse and dog racing and dissecting frogs in school labs.

Moreover, the movement has altered the very standing of animals in society. One way to measure the extent of this change is through the work of one woman.

Thirty years ago, before Jane Goodall popularized her field studies of African chimpanzees, it was commonly believed that animals did not have consciousness, did not use tools or communicate in something we can roughly call language. Today, many, if not most, Americans say chimps have all those characteristics.

Americans also generally recognize that whales communicate in elaborate song, that wolves organize themselves in complex family groups and that elephants grieve at the death of other elephants.

"Animals are like us in all important things—they feel pain, act with altruism, they talk and suffer fear. They value their lives, even if we don't understand those lives," said Ingrid Newkirk, chairwoman of People for the Ethical Treatment of Animals, or PETA, which is perhaps the most controversial leading-edge group in the animal rights movement.

The Times Poll of 1,612 Americans found that 47% of adults agreed and 51% disagreed with her premise.

Animal rights leaders said they are surprised that so many Americans shared what has been considered, until now, a radical view. "I'm flabbergasted," Newkirk said.

Just as shocked are those who only recently began organized resistance to the protection movement.

In Portland, Ore., the National Animal Interest Alliance describes itself as a middle-of-the-road organization of dog breeders, hunters, researchers and ranchers. Executive director Patti Strand puts it this way:

"The humane movement was traditionally concerned with the humane treatment of animals. In the last 20 years, however, it has been taken over by animal rights leaders whose priority is neither the humane care of animals nor the prevention of cruelty to animals, but instead the promotion of a revolutionary value system which redefines man's relationship with other animals. Animal rightists want to end man's use of animals altogether."

With all this as background, the future of animal protectionism may well lay in how activists fare on several key battlegrounds:

Research

Animal experimentation is the arena in which activists have toiled most vigorously for gain, where they find themselves most deeply divided, where they have suffered the greatest setbacks and engendered the most wrath.

Animal protectionists claim 20 million to 70 million animals suffer and die each year in research, much of it useless, repetitive and costly. They say scientists are trapped in an old-fashioned system in which animal research is a proven way to keep the grant money coming and meet the "publish or perish" requirement of academia. Meanwhile, the most significant advances in understanding AIDS and cancer have occurred outside animal labs.

The Physicians Committee for Responsible Medicine, an animal rights group, recently published a review by its president, Dr. Neal D. Bernard, in which he concluded that animal experiments often lead researchers in "precisely the wrong direction."

More than half the drugs approved by the federal Food and Drug Administration from 1976 to 1985 were found to be more dangerous to people than animal testing and limited human tests first indicated, Bernard said, citing federal General Accounting Office research.

Similarly, animal protectionists argue that testing of consumer products on animals, for such things as the safety of cosmetics and household cleaners, is flawed and continued chiefly to limit liability from lawsuits.

After a four-year international boycott and publicity extravaganza, PETA succeeded last autumn in obtaining a pledge from L'Oreal, the world's largest cosmetics producer, to cease animal testing. Such campaigns have proved so effective that department stores now advertise "cruelty-free" products.

The range of views within the movement is extreme. The Humane Society of the United States represents the moderates, calling for three R's in testing—reduction, refinement and replacement, but not abolition. PETA wants all tests banned, and some of its leaders express sympathy with those who break the law and raid labs, destroying research and freeing animals.

The biomedical research industry has responded with a vigorous campaign of its own. Hundreds of millions of lives have been saved by animal research, says the American Medical Assn. Two-thirds of the Nobel Prizes awarded since 1901 involved discoveries resulting from the use of animals.

Among the medical advances attributed to animal tests, the AMA reports, is heart-bypass surgery, which was developed on dogs. Treatments or cures for scores of other ailments have resulted from these experiments, including tuberculosis, smallpox, cholera, arthritis, polio and mumps.

Who will live and who will die? This, against the photo of a monkey and a boy, has become a rallying cry for the scientists.

Raids on laboratories, including firebombings, release of animals and other vandalism, have been occurring in the United States for 15 years, embittering those in the research industry and gaining them a host of allies and sympathizers.

These groups, backed by the federal government, argue that the traditional, moderate humane movement has been taken over and radicalized by those espousing the belief that animals have the same rights as people.

In their report to Congress on "Terrorism Against Animal Enterprises," the Justice and Agriculture departments said that since the 1970s, "the cause of animal rights (has become) a mainstream 'single issue' movement, in some instances competing for or displacing the agenda of traditional animal welfare societies."

From 1979 to June, 1993, the report catalogues 313 extremist attacks on research institutions and secondarily meat producers and the fur industry. Of those, 46% occurred in California. Total losses were estimated at $137 million.

For the last several years, federal attorneys and the FBI have mounted a nationwide investigation of the animal rights movement. Grand juries have been convened in Washington state, Louisiana, Oregon, Utah and Michigan. Only one person is known to have been indicted, although three people were jailed for several months this year in Spokane, Wash., for refusing to answer questions before a grand jury.

Animal protectionists see themselves as victims of government witch hunting and say they believe that the power of moneyed research interests lies behind the federal probes. After all, they reason, if stopping domestic terrorism was really the government's motivation, why are there no federal grand juries investigating the decade-long campaign of bombing of abortion clinics and the attacks on doctors who perform abortions?

Vegetarianism

Scientists and protectionists find themselves more or less in agreement in questioning humanity's most deeply embedded relationship with animals—as a source of food. Some old-line animal welfare organizations like the Humane Society of the United States preach a moderate line, encouraging Americans to reduce consumption of animals and to use their buying power to support "free range" animal production, as opposed to high-volume factory farms where animals live under harsher conditions.

"In this day and age, most people who have grown up with a meat-based diet aren't going to give it up," said Patricia Forkan, executive vice president of the Humane Society. "There are different paths you can take and still be a humane person."

But the more impatient activists say they believe that only by chal-

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lenging America's eating habits head-on can the movement make further strides. "It used to be that people thought animals were stupid and dirty," Newkirk said. "Well, only someone who is dirty and stupid would put a piece of corpse in their mouth and lick their fingers afterward."

For some Americans, vegetarianism is a health choice; for others, it's a matter of conscience. According to a Vegetarian Times magazine survey, 12 million Americans consider themselves vegetarians, a growth of 2 million over the past decade.

"The most recognizable pattern in food consumption behavior the last 20 years has been the shift away from animal products," researchers Shida R. Henneberry of Oklahoma State University and Barbara Charlet of Iowa State University wrote in a 1992 issue of the Journal of Food Products Marketing.

Fur

It's a familiar fight to many Americans: The wearing of fur now carries a stigma.

Both sides agree fur sales are down. Many in the industry—from trappers and ranchers to retailers—acknowledge the effects of protest, vandalism and cries of outrage. To wear fur on the streets today is to risk, even invite, confrontation.

But the issue is far from settled.

This season's fashion magazines are loaded with advertisements for fur. Major clothing designers continue to show fur coats. And in the tight circle of high fashion, magazine photo layouts tend to follow the trends of advertising, thereby furthering the powerful suggestion that fur is fashionable. During this holiday shopping season, an underground group calling itself the Animal Liberation Front planted arson devices at four major Chicago department stores that sell furs.

Pricilla Feral, president of Friends of Animals, told a holiday anti-fur rally in New York that pressure from activists helped reduce fur sales from $1.8 billion five years ago to $600 million last winter.

Sandy Blye, executive vice president of the American Fur Industry, said that last winter's fur sales were $1.1 billion, up 10% from the previous year. She attributed soft sales in the previous four winters to the recession and warm weather, not animal protests.

Are leather shoes and briefcases next? Maybe, but not soon. Many animal protection leaders have themselves reduced or eliminated the use of leather, but virtually all agree that Americans are not ready to feel guilty about their wallets and watchbands.

Pets

If you look down the path for a split among animal protection activists, this could be it.

One of the traditional, and largest, constituencies of the movement are pet owners. Leaders such as the Fund for Animals founder Cleveland Amory and naturalist author Roger Caras are closely associated with the idea that pets are part of the essential human experience and bring people closer to animals.

But pets are being called into question by others who are—depending on your view—in the vanguard or on the fringe of animal protectionism. These voices are still few in number, but there is growing circulation to their arguments that pets are a form of slavery and debase both people and animals.

In particular, these leaders challenge the time-honored practice of raising animals to purebred standards. To the chagrin of many breeders, even the Encyclopaedia Britannica contains an entry under "dogs" that is pointedly unfavorable to purebreds, suggesting "more people have come to value the relatively trouble-free mongrel or mixed-breed dog."

Newkirk argues for an end to all reproduction of domestic animals as a step toward a pet-free society. Animals, she says, "are not cheap burglar alarms or living toys."

The Future—Youth

The next generation, and the one after, holds the promise of accelerated change. At least that is the consensus view of animal activists.

Whether it's Goodall, PETA or the Humane Society, those in the movement recognize children as their best hope to reshape America. As they see it, children have yet to be influenced by the economic interests of those who use, or if you prefer, exploit, animals.

Children's literature and can-do manuals abound in the animal protection movement. PETA's book "Kids Can Save the Animals," instructs youngsters to call the toll-free phone numbers of department stores to protest furs and animal-tested cosmetics, to call sponsors and object to rodeos, circulate petitions for "violence-free" schools that do not use frog corpses for biology lab and to boycott zoos and aquariums and marine parks.

The youngest respondents in the Times Poll, ages 18 to 29, were more likely to oppose hunting and the wearing of fur than was the overall population. And 61% said they believed that animals are like people in "all important ways," compared to 47% for the population at large.

Priorities

The suffering of a single creature hits hard in the heart. But does an animal rights advocate's tearful empathy with the suffering of a sea otter in an oil spill then transform itself into political action on behalf of all sea otters? Or, if you aim to protect a wolf from a trap or a bear from a hunter, isn't it just as important to fight for places for these creatures to roam?

Many times these days, the answer is no. Gary Francione, a Rutgers University law professor and founder of the Rutgers Animal Rights Law Clinic, is one of the foremost thinkers in the animal protection crusade, and he bemoans its "very strong strain of anti-intellectualism."

He contends that leaders of the cause devote too little energy to defining the underlying moral principles of animal protection and engaging the minds, rather than the emotions, of Americans.

In particular, emotionalism opens the movement to criticism that it is ignoring one of the most vital issues for the long-term well-being of animals—the fierce and difficult fights over wild animal habitat.

PETA's 234-page book for children devotes only three pages to habitat protection, and then only to tropical rain forests. It also devotes three pages to protecting insects by propping twigs into birdbaths so that trapped bugs can climb out.

Congress-watchers and environmental leaders say that animal rights activists almost never join in the coalitions lobbying for habitat expansion.

This is particularly notable because, over the years, activists have been contesting hunters for their place in the blue-ribbon conservation movement. Hunters have traditionally been a strong voice and financial contributor to habitat conservation and, in that regard, an ally to environmentalists.

So far, animal rights activists have no such credible voice in these debates and their finances go elsewhere.

"Does our sport have a future?" Hunting magazine asked in a cover story last year. Its biting response was that anti-hunters refuse to face up to the long-term threats of humanity on habitat.

"Yes, it is much easier for the anti's to call us murderers than to effectively fight for habitat—and to admit their own responsibility for diminishing that habitat," the magazine said.

Some activists accept the criticism and have resolved to broaden their vistas. The Humane Society of the United States will begin accepting bequests of property for habitat preservation in 1994. Reaching beyond its antihunting agenda for the first time, the Fund for Animals has promised serious financial backing for the $1.9-billion 1994 California ballot initiative campaign for parks and wildlife habitat.

"We've been absolutely overwhelmed with animal abuses over the years, so it was right to have put our energy there," said Wayne Pacelle of the Fund for Animals. "But we wholeheartedly accept the principle that wild animals need habitat, and the movement is shifting in that direction."

Animal Testing Reportedly Falls. Report Says Researchers Can Do More to Curb Suffering

By Scott Allen, Globe Staff
The Boston Globe
March 3, 1994

Under the pressure of high costs and constant attacks by the animal rights movement, scientists have reduced the use of animals in laboratory research by about 25 percent nationwide since 1980, a report from Tufts University concluded yesterday.

The authors said, however, that government and researchers could do more to limit needless suffering inflicted on animals. At the same time, Franklin M. Loew, one of the authors and dean of Tufts' School of Veterinary Medicine, took both researchers and activists to task for turning the debate into "the Northern Ireland of science." Their absolutist positions, he said, have made it difficult to make rational policy on the 20 to 30 million animals used annually in US labs.

"Any group now in the business is perceived by others as having a particular view. They're either pro-research or anti-research," Loew said. "There are not only two choices."

"The Animal Research Controversy," released at a Washington press conference, is the culmination of years of work by Tufts' Center for Animals and Public Policy, created a decade ago to seek a middle ground on the proper use of animals in research.

The authors admonished both sides, calling on scientists to "formally accept that the use of animals in research entails some costs in animal death and distress." They also warned animal rights activists that an end to such research would "likely slow down the advance of biological knowledge."

Partisans on both sides greeted the report warily. Animal research foes pointed out that Tufts-affiliated New England Medical Center in Boston reported using nearly 20,000 animals in research in 1992. And a spokeswoman for a biomedical research group said Loew and coauthor Andrew Rowan seem "rather weighted toward the animal rights side." The criticism, in a way, is a microcosm of the debate, which has revolved around hard-line assertions on both sides. Animal rights activists have run newspaper ads showing monkeys with electrodes implanted into their scalps, while researchers counter with testimonials from people who say their lives were saved by drugs tested on animals.

In Boston, where more than 400,000 animals were reportedly used in laboratories in 1992, the New England Anti-Vivisection Society is planning an anti-research march in April.

Through the rancor, the numbers of animals used in laboratories seem to be decreasing, though the magnitude of the drop is disputed. Loew and Rowan admit their estimate of a 25 percent decline is an educated guess based on incomplete data. The US Department of Agriculture does not require researchers to report the use of rats and mice, which account for 80 to 85 percent of all lab animals.

The Anti-Vivisection Society accepts that the long-term trend may be down, but a spokesman said the numbers have risen in some categories. From 1988 to 1992, federal figures show the number of lab animals in use, aside from rats and mice, rose from 1.6 million to 2.1 million.

In addition, the Agriculture Department leaves it to researchers to define which procedures are painful to animals. The agency estimates that 5 or 6 percent of lab animals suffer pain without drugs to ease it, but the Tufts researchers said that figure is probably low.

Loew said two of the most controversial practices—testing hair sprays and other products on the eyes of rabbits and force-feeding chemicals to rats until half of the group dies—are crude scientific tools with limited applicability to humans. "They probably need to go by the boards," he said, but the US Food and Drug Administration still often requires them.

The Tufts report calls for a new government agency to monitor research on animals, including rodents, and to set better reporting standards on animal pain.

Mary Brennan, vice president of the Foundation for Biomedical Research in Washington, said she did not disagree with the Tufts findings but was "surprised" the authors did not give researchers more credit.

Activist Accused In Bombing

United Press International
July 18, 1993

East Lansing, Mich.—The indictment of a fugitive animal rights activist for the 1992 firebombing of a Michigan State University mink research facility is part of a widening federal probe of "animal rights terrorism," law enforcement officials said Sunday.

Grand juries in Michigan, Washington, Oregon and Louisiana are investigating a six-year string of arsons, bombings, burglaries and extortion, and federal agents have questioned animal rights activists in New York, California, Texas and elsewhere.

"We are looking at every possibility to see what events constitute a pattern," U.S. Attorney John Smietanka said.

Some activists claimed the probe was politically motivated, but Hal Helterhoff, FBI special agent in charge of Michigan, said, "There's nothing wrong with being for animal rights. What's wrong is the criminal acts."

On Friday, officials announced a federal grand jury in Grand Rapids indicted Rodney A. Coronado, 27, on charges of malicious destruction of property, interstate travel to commit arson, extortion, arson and interstate shipment of research materials stolen from the office of MSU animal science Professor Richard Aulerich.

The charges follow a 16-month investigation by the FBI, the Bureau of Alcohol, Tobacco and Firearms and MSU campus police.

Coronado was described as the founder of a group called the Coalition Against Fur Farms, active in animal rights protests and activities. He comes from a wealthy West Coast family and was reported last seen in Oregon in November 1992.

Ingrid Newkirk, vice president of People for the Ethical Treatment of Animals, said people like Coronado represent a "tiny fraction of the movement," possibly 50 to 100 activists nationwide.

The MSU campus office of Aulerich and Professor Karen Chou were ransacked and bombed on Feb. 28, 1992. At the same time, a mink laboratory was vandalized, and animals were released, though they returned to their nest. Aulerich was studying nutrition and the decline of the natural mink population.

Susan Paris, president of the Americans for Medical Progress, a nonprofit group that backs animal research for medical purposes, said she was pleased by the indictment.

"Animal extremists like Coronado are fanatical terrorists who will stop at nothing to advance their radical agenda regardless of the human suffering they cause," she said.

Researchers That Use Animals Are Looking Over Their Shoulders

By Janet Wells; *San Francisco Chronicle*
The Houston Chronicle
Sunday, October 3, 1993

Berkeley, Calif.—Enclosed by bulletproof glass, Dr. Roy Henrickson sits tensely inside his University of California office, watching someone standing outside his windows. He knows that the thick panes should stop a slug of metal, but he says he wonders how quickly a brick or rock could come crashing his way.

The tall, imposing researcher is no less wary when he walks to his basement labs, the elevator remaining motionless until he clears the security block with a magnetic card. When he works at a field station up the hill, he has to remember to deactivate the motion sensors before entering.

At private companies researching high-energy physics or defense weapons, such security measures are common. But Henrickson is a university veterinarian, not a nuclear engineer—and as head of Berkeley's animal research program, he has been cast, along with thousands of researchers nationwide, in a war against animal rights advocates.

"The whole climate is one of living under harassment and apprehension," said Henrickson. "This is terrorism."

Now, in a signal of the increasing polarization over the animal research issue, universities and medical centers are dramatically tightening security to keep animal advocates at bay.

Video cameras, surveillance teams and digital door codes are all part of the high-tech array, and jittery employees are trained to be on alert for suspicious packages.

"Universities and research institutions are into the multimillions of dollars in increasing security," said O.W. Sweat, director of security for the National Institutes for Health, the country's biggest provider of funds for biomedical research.

Between 1991 and 1992, the number of incidents attributed to animal rights advocates increased 61 percent, to a total of 569 criminal acts, protests and boycotts. The tally caused an estimated $9.6 million in property damage and lost research, according to the Lee Group, a Virginia-based organization that tracks the animal rights movement.

In California alone, an estimated $5.7 million in damages has occurred to animal research records, equipment and facilities since 1983, said officials of the California Biomedical Research Association, which promotes the use of animals in research.

The animal rights movement began to gain momentum in the early 1970s, when advocates obtained grisly evidence of cruelty to laboratory animals and helped force major changes in state and federal legislation to ensure the humane treatment of animals used in research.

But humane treatment is no longer enough for many advocates, who now call for the complete cessation of invasive research on animals. "In the old days, people used to take blacks and let them get syphilis as an experiment and not treat them," argued Elliott Katz, president of In Defense of Animals, the most vocal and visible animal rights group in the Bay Area.

"As our ethics and morals improved, we decided that before doing any invasive research on a patient, you have to have the patient's consent," he added. "Working with animals, we haven't progressed to that stage."

Researchers, in turn, feel that animal rights advocates promote the rights of cats, dogs and monkeys at the expense of human safety and psychological well-being.

John Young, primary veterinarian at Cedars-Sinai Medical Center in Los Angeles, was forced to move after demonstrators held four protests in front of his Playa del Rey home last year.

"They would stand out in front of the house with gruesome photographs, talk to the neighbors and pass out leaflets," said Young, who is trying to keep his new address a secret. "I'd like to believe that these people are incapable of doing harm, but when you see incidents in abortion, with people being shot and killed, you have to wonder if it could happen with the anti-research movement, too."

Indeed, harm seems to be on the minds of at least some animal advocates. At UC Berkeley, researchers receive dozens of violent telephone calls and letters each week.

Russell De Valois, a UC Berkeley optometry professor who uses cats and monkeys to study the neurology of vision, has been a frequent target of Katz and other animal rights advocates. In recent weeks, fliers with his home phone number and the message "Die, De Valois" were circulated on campus. His wife and children also have been the targets of threats and taunts.

In Defense of Animals does not advocate violence or illegal acts. Nonetheless, the group does not strongly condemn such tactics.

"We have never given out any researcher's phone number or address," Katz said. "But if people are upset and want to tell someone like Russell De Valois that he's an irresponsible, cruel person, they should have the right to do that." In 1988, De Valois' colleague, ophthalmology professor Richard Van Sluyters, received a death threat from an antivivisectionist who died while rigging a powerful homemade bomb.

At Stanford University, animal research was housed at the medical center until administrators began to fear that a bomb or fire set by animal rights advocates would endanger patients as well as animals. In 1989 Stanford moved researchers to its $30 million animal facilities, which are equipped with more than the standard high-tech lock and surveillance systems.

One lab area, for example, is accessible only after researchers pass by an optical scanner that identifies users by their eyes.

"You can give your key card away, but you can't give your eye away," said Joanne Blum, Stanford's associate director of laboratory animal medicine.

For his part, Henrickson insisted that UC Berkeley spend $50,000 to install bulletproof windows in his offices in the Northwest Animal Facility, the headquarters for much of the animal research at the university. During construction of the $14 million facility, which was heavily protested by animal rights advocates, the university posted 24-hour security guards and spent $500 a day on a dog squad to sniff for bombs.

Animal rights advocate Elliott Katz countered that the university's focus on security is "paranoid."

Medical Leaders Outraged Over Animal Rights Destruction

PR Newswire
April 29, 1993

Washington, April 29—Medical leaders today expressed outrage over destructive acts by animal rights activists to the homes of five people involved in animal research early Wednesday morning.

A group calling itself the "Animal Avengers" has claimed responsibility for the vandalism, which included spray painting homes and driveways and smashing car windows. A representative of that group who contacted the Associated Press (AP) said the vandalism marked World Week for Laboratory Animals.

"I am appalled that extremists continue to commit these acts of terrorism. The animal rights movement only serves as an obstacle to medical advances. Without animal research, medical progress would come to a virtual standstill," said Frankie L. Trull, president of the Foundation for Biomedical Research (FBR). "Personal attacks are not a legitimate form of protest. Animal rights activists are trying to advance their agenda by using intimidating tactics to make researchers and their families fear for their lives."

"It is clear that most Americans understand and support the essential role of animal research in medical progress," said Michael E. DeBakey, M.D., Chancellor of the Baylor College of Medicine and chairman of FBR. "The small group of individuals opposed to this important work can find no better way to communicate than by resorting to desperate acts in the middle of the night."

According to the animal rights activist who contacted the AP, the attacks were meant to turn the researchers' neighbors against them.

However, Larry Cunnick, President of BIOCON, Inc., who was a target of the attacks, said these tactics have not been successful. "It's a shame that animal rights activists would rather voice their opinions by destructive means instead of debating us in an open forum. All of my neighbors have seen the damage to my home and are outraged that vandals have come into our neighborhood. They have been very supportive of me and the work that I do. If their goal was to separate me from my neighbors, it didn't work."

As part of the attack, Cunnick's garage door and driveway were spray painted with the words "Animal killer!" and "Leave animals alone!" Activists also planted a small wooden cross with a purple rose resting on it in his yard.

Rep. Charles Stenholm (D-Texas), a longtime supporter of animal research, said he is constantly amazed at the irrational actions of some activists. "This is why we must ensure that researchers receive the support and protection they deserve." Last year, a bill Stenholm sponsored was combined with a Senate bill to become a law giving federal protection to animal research facilities.

The Foundation for Biomedical Research is a nonprofit educational organization dedicated to promoting public understanding and support of the ethical use of animals in scientific and medical research.
CONTACT: Frankie L. Trull or Mary Brennan of the Foundation for Biomedical Research, 202-457-0654

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Are Animals Equal?

By Katie Monagie
Scholastic Update
April 16, 1993

Animal-rights supporters say animals should have the same rights to life and liberty as human beings. But a lot of people disagree. The controversy is challenging some of our deepest-held moral beliefs and practices.

On New Year's Day last year, in the middle of the nationally televised Rose Bowl parade in Pasadena, California, three giant "animals" descended on the float of General Motors. Dressed as a pig, a rat, and a rabbit, the demonstrators ran in front of the float and unfurled a banner: "Animal Tests Keep GM in the Dark Ages."

The demonstrators, arrested immediately, were protesting GM's use of pigs and ferrets in crash tests of its cars. Soon, anti-GM demonstrations spread across the country. Protesters dressed as animals took sledgehammers to GM cars outside of major car shows. (The cars had been donated by sympathizers.) Finally, on February 12, GM said it would suspend all animal crash tests.

The demonstrations were just one example of a growing movement in this country supporting a cause known as "animal rights": the belief that animals should have some of the same rights and protections as human beings. Over the last decade, the movement has grown from the fringe concern of a few people into a powerful political lobby with hundreds of thousands of supporters. Through protests and persuasion, animal-rights advocates have sought to change the way companies conduct business. In the process, they've been changing the way many Americans think about using animals for food, clothing, and research. But critics say their views go too far.

Head of the Kingdom

Humans have long placed themselves at the head of the animal kingdom. For ages, we have routinely killed animals for food and clothing, used them to carry us and draw plows, trapped them in cages for display, and performed experiments on them to advance our knowledge. Today, more than 17 million animals—most of them rats—are used in scientific research each year. Billions more are killed to produce fur, leather, and meat for human consumption.

Advocates of animal rights believe those actions are immoral. Animals, they say, feel pleasure and plain in much the same way that humans do. They should have the same right to life and freedom from suffering as people should. Animal abuse, the activists believe, results from "speciesism"—discrimination against other species. They equate speciesism with racism and sexism.

"When it comes to feelings like pain, hunger, and thirst, a rat is a pig is a dog is a boy," says Ingrid NewKirk, cofounder of People for the Ethical Treatment of Animals (PETA), the nation's largest animal-rights organization.

PETA wants to radically change the way people treat and think about animals. Among other things, they want humans to stop eating meat and drinking milk; stop wearing fur, leather, and wool; stop owning pets and supporting zoos; and stop using animals in medical research. If you don't think it's right to eat your brother for dinner, they say, then it's not right to slaughter a calf, either. "Animals are not ours to eat, wear, experiment on, or use for entertainment," goes PETA's official motto.

PETA gained national attention in 1981 when it uncovered the mistreatment of monkeys in a government-sponsored laboratory in Silver Springs, Maryland. When PETA turned over evidence of abuse to the authorities, it prompted the first-ever police raid of a research laboratory to investigate alleged cruelty to animals. The pictures of the monkeys on television news shows inspired sympathy for the cause around the country. Today PETA has more than 350,000 members, and, with an annual budget of $9 million, actively lobbies Congress and state governments on animal-rights issues.

Some animal-rights advocates go even further than PETA. The Animal Liberation Front (ALF), for example, is currently the only domestic group on the FBI's list of terrorist organizations. Since 1982, the group has been involved in more than 45 separate incidents of vandalism, harassment, or arson against scientific laboratories where research is conducted on animals. A fire set by ALF activists at a University of California veterinary center in 1987 caused $3.5 million in damages.

Vocal Opposition

Those actions, together with the growing influence of animal-rights activists in government, have led to increasingly vocal opposition. "Animals don't have rights," says Kathleen Marquardt, founder and head of Putting People First (PPF), a group founded to combat animal-rights activists. "Humans are the only species that have rights."

In order to have rights, Marquardt says, a creature needs to be a moral being—one that can choose between right and wrong." Animals can't choose, so they can't have rights."

Marquardt also thinks it only natural that people kill animals for food, clothes, and medicine. "Every species has to look out for itself," she says, "or it will die out. Humans are higher on the food chain than other animals—that's why we eat them."

Research on animals has produced vaccines for polio, tetanus, and scarlet fever; insulin for diabetes; and antibodies to fight infection. While PETA says there are better alternatives to animal testing, such as cell and tissue cultures, most scientists say that no alternatives yet exist to completely replace animal testing.

"If we stopped all animal research now," says Frankie Trull, president of the Foundation of Biomedical Research, "it would put an end to finding potential cures to a lot of terrible diseases like AIDS, Alzheimer's, and cancer."

Some people believe there should be a happy medium between PETA and Putting People First. They believe in animal welfare—that is, in the health and well-being of animals, but not their equality with humans. Groups such as the Humane Society of the United States and the American Society for the Prevention of Cruelty to Animals are not opposed to meat eating, for example, but they do work to make sure that humans treat animals as humanely as possible in medical experiments or circus acts.

The debate over these differing views is heated. In many ways, it tests our deepest-held moral beliefs. Are humans superior to other species? If so, why? What makes us special? Is the life of a human being more important than that of another animal? Is it morally justifiable to perform experiments on animals in order to better the human condition?

The outcome of the debate will have profound consequences for our society. The American people have yet to make up their minds on the issue. The vast majority, for example, remain meat eaters. But a national opinion poll taken in 1990 found that 80 percent of Americans now say they believe animals have rights, and that limits should be placed on how humans use them. Sixty-three percent said killing animals to make fur coats should be illegal, and 58 percent thought using animals to test cosmetics should be outlawed.

Businesses have taken heed. Many clothing designers have dropped their fur lines, for example, seeing how fur sales have plummeted. And several major companies—including Avon, Revlon, and Benetton—have stopped testing their products on animals.

Representatives of the medical research industry point out that even though companies like Avon don't test products on animals anymore, all the ingredients they use to make their products have been animal-tested somewhere else.

The debate is sure to continue, "It's a very potent issue," says Andrew Rowan, director of the Tufts University Center for Animals and Public Policy. "The definition of what's human and what's animal goes to the core of how we define ourselves and set up society."

What Do You Think? Do Animals Have Rights?

■ Yes. The division between humans and other animal species is an arbitrary one that benefits only humans. Animals experience pain and pleasure just like humans. Their lives are valuable in and of themselves—not merely as commodities for human use. We have no right to take the life of a fox for its coat, or a pig for its flesh, just because we desire it.

Millions of animals die in laboratory experiments every year—often painfully and cruelly. Billions more are slaughtered so that we can eat steak and wear fur coats. We should respect animals' rights and not kill them to feed, clothe, or entertain us. We should also stop all use of animals in scientific research and in classroom dissection. We can study computer models instead and put our energies into finding alternatives to animal research.

■ No. If we want to progress as a society, we need to use animals in scientific research. Animal research has produced vaccines for polio, tetanus, and scarlet fever; insulin for diabetes; and antibiotics to fight infections. There's not yet a perfect replacement for animal research. Right now, animal experiments save human lives.

The very idea of "rights" is a construct of the human mind. The idea exists because human beings have the ability to make moral choices, to distinguish between right and wrong. Animals have no such ability; they act by instinct. Therefore, they cannot have rights.

Humans have a responsibility to treat animals humanely and not let them suffer needlessly. But we are animals' natural predators. We are higher on the food chain. It is natural for us to eat them, just as it is natural for wolves to eat deer.

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Animal Rights

Lesson 2

Objectives
Students will:

- Work collaboratively in groups to discuss the newspaper articles.
- Place groups with an interest in animal rights along a continuum.
- Analyze the articles and prepare a presentation on behalf of a special interest group.
- Prepare questions and evaluate presentations.

Materials
Copies of handouts:

- Interest Group Instructions
- Committee Instructions

Time Required
1 to 3 class periods.

Procedures
■ **If you used the jigsaw method** to read the articles, ask the groups from the previous lesson to reconvene and share their insights from their reading. Give at least 15 minutes for the groups to sum up their reading for their peers.

■ **Reconvene the entire class** and elicit from the students the various points of view they read. Get at least as many points of view as there are groups in your classroom, the more the better. Get the class to discern what the various perspectives are generally (e.g., pro animal rights, pro animal research, somewhere in between) by drawing a continuum on the board. At the left end write "Total animal liberation, including no pets" and on the other end write "Animals are here only to serve humans." Ask the student who volunteers a name or group to place an X on the continuum where he/she thinks this group/person's beliefs lie. Students should list some of the following groups as a result of their reading. The groups are listed below in order, prioritized loosely starting with those on the left end of your continuum (totally against use of animals in medical research) to those on the right end (very much in favor of using animals in research). For example, the continuum might have the Coalition Against Fur Farms on the far left, and Putting People First on the far right.

(Left end of the continuum): Coalition Against Fur Farms, Animal Liberation Front, Animal Avengers, In Defense of Animals, People for the Ethical Treatment of Animals, Anti-Vivisection Society, Physicians Committee for Responsible Medicine, Voice for Animals, Humane Society of America, American Society for the Prevention of Cruelty to Animals, National Animal Interest Alliance, Fund for Animals, Thank You Research and Mrs. Rump, Americans for Medical Progress, California Biomedical Research Association, Foundation for Biomedical Research, Putting People First. (Right end of the continuum).

■ **Once the students** have completed the continuum, and have discussed the variety of viewpoints on this issue, divide them into five groups of 4 to 5 students each. One group will be the House Committee on Science. The other groups will be the following special interest groups:

- Coalition of Animal and Research Ethics (CARE)—This group opposes any use of animals in medical research, but does not support violent tactics.
- Sharing Our Future Together (SOFT)—This group takes a moderate position on the use of animals in research.
- People and Animals Together (PAT)—This group also takes a moderate position on the use of animals in research.
- People First—This group believes animals are here to benefit humans and should be used as necessary.

■ **Tell each interest group** (not including the House committee) they are to work together to prepare a persuasive presentation of their group's position on the use of animals in medical research. They should use the newspaper articles for information. Even though the groups have fictitious names, their arguments can be derived from positions of similar groups in the articles. (You may also give students the option to do additional research.)

■ **Give each group** a copy of the Interest Group handout. Tell them they will participate in a lobbying activity (explained below) and then make a four-minute presentation to the House committee at a special hearing to gather information before drafting legislation about this issue. They should include specific ideas for legislation that will effect their group's point of view on this topic. Give the groups at least 30 minutes to prepare, or depending on your time constraints, give them extra time to do additional research.

■ **Tell the House committee** to select a chairperson, who will be responsible for keeping time and chairing the meeting. Give them a copy of the Committee handout. The committee should develop questions from reading the newspaper articles. Each Representative should take one group, and be responsible to lead the questioning of that group. The Representatives should try to remain neutral, and base their decision on what they hear from the groups. The Representatives may select identities, and the type of district they represent (rural, urban, etc.). After the hearing, each Representative will be responsible to sum up what they heard from their group.

■ **The next class**, inform students that prior to the hearing, there will be a "reception" at which members of the special interest groups will have an opportunity to talk (i.e., lobby) with their Representatives. Explain that lobbying is pressure by a group on legislators in an effort to have legislation passed that benefits that group. Everyone will have the opportunity to exchange views with each other. To insure that everyone stays "on task" during the reception, tell them that after the reception, everyone will list those people they spoke to, and a brief description of what was said.

- **Give students** name tags identifying their roles. Have the members of the House committee stand first and introduce themselves and tell what district they represent, so that the lobbyists can easily identify them and find them during the reception.

- **Announce that the reception** will last 20 minutes. During that time, members of the special interest groups should try to talk to as many politicians as possible (at least two).

- **After the reception**, convene the House committee meeting. Set up the room with the committee in front, and those there to testify in the audience.

- **Ask the chairperson** to call the meeting to order. Allow about 35 minutes for testimony. First, each special interest group will have 4 minutes to present their position, plus 2 minutes for questions from the panel. The groups may select one spokesperson, or all members may speak.

- **After hearing all** of the testimony, each Representative will briefly sum up what they have heard from their group. (No more than two minutes each.)

Note: Either continue on to Lesson 3, or if you want to shorten the unit, you could stop here, and ask the following questions of students:

1. Did each special interest group manage to have its views heard? Were some more effective than others? What were the reasons for this?
2. To the committee members: Was the lobbying exercise useful to you? Why or why not?
3. To the lobbyists: How did it feel to try to influence someone's views?

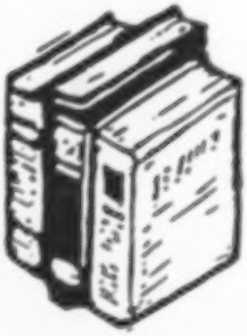
Extensions

- **Meet the Press**. Ask each interest group to select a representative for "Meet the Press." Tell them they are trying to influence the public to support their point of view on the topic "What Should the Law Be Regarding Animal Rights in Society Today?" This lively television program is watched by both the general public and other politicians, and their appearance could easily influence of the upcoming legislative session.

  Each group should also select a member to play the role of a famous reporter (or bring in outsiders to act as the press corps). The press corps should prepare questions for the group representatives. Arrange the press and representatives around a round table, if possible. Each interest group on the show will get one minute to present their point of view, then a dialogue will begin, with the press asking questions. Each interest group member will be given an opportunity to answer each question, around the table. Allow no more than 20 to 25 minutes for this activity.

- **PSAs.** Have each interest group prepare a 3-minute public service announcement about their point of view, with visuals. Videotape them.
- **Dinner Party.** Ask students to role play people from the groups identified. Encourage them to pick an identity different from one they personally agree with. Put students in groups of 4 to 6 people, and tell them to pretend they are guests at a dinner party. Dinner is over and relaxed conversation is ensuing. Each student should contribute to the conversation, staying in character.

Instructions to Special Interest Groups for Lobbying Simulation and House Hearing

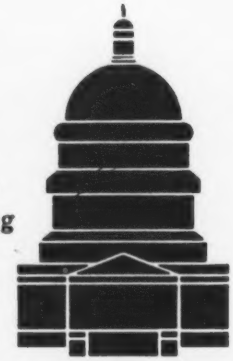


Your goal at the reception is to convince the Committee members that they should find a solution to the problem of the use of animals in medical research that will fit the goals of your group. In planning a strategy, decide who will talk to whom, and whether you will try to talk to every member of the committee or target those politicians who you think are most likely to agree with you. Avoid arguing or interrupting other conversations. Remember that this is a social occasion.

Finally, decide a strategy for the hearing. You may select a spokesperson for the entire group, or you may each testify.

Determine your best arguments, identify the strengths and weaknesses of your position, and be prepared to respond to questions about your weak points. Keep your presentation brief and to the point. Review the positions of other groups, and point out the weaknesses of the other positions. Remember, you only have 4 minutes to testify.

Instructions for House Committee



First, elect a chairperson. The chairperson is responsible for seeing that each committeeperson's views are heard during committee meetings, for chairing the hearing and for announcing the committee's decision. During the hearing, the chairperson should keep order and make sure that speakers do not take more than their allotted time (four minutes for each group, plus 2 minutes for questions from the committee).

You may each pick a district to represent. At least one person should represent a rural area where hunting is popular, another an urban area with many high tech industries, including a large medical research facility.

Then review this information, and the newspaper articles. Prepare questions to ask the lobbyists, both at the reception and hearing. Everyone should prepare at least two questions to ask the lobbyists during the reception.

The lobbyists will be from the following groups:

- **Coalition of Animal and Research Ethics (C.A.R.E.)**—This group opposes any use of animals in medical research, but does not support violent tactics.
- **Sharing Our Future Together (S.O.F.T.)**—This group takes a moderate position on the use of animals in research.
- **People and Animals Together (P.A.T.)**—This group also takes a moderate position on the use of animals in research.
- **People First**—This group believes animals are here to benefit humans and should be used as necessary.

At the lobbying reception, listen to as many people as possible, and ask questions to make sure that you understand each group's position. Don't make any promises you can't keep.

Each Representative should take one group, and be prepared to lead the questioning of that group during the hearing. (If necessary, two Representatives can work together to prepare questions for one group.) The chairperson will assign Representatives to specific groups.

As a member of the House Committee, your job is to listen to the presentations of the special interest groups, and think about solutions that you feel are wise, both in terms of protecting animals and the interests of medical researchers. You must also consider the people you represent, your constituents. (Remember those surveys from the first lesson.)

After the hearing, you will be asked to sum up what you have heard from the group you are responsible for, so take notes.

VISUAL/SPATIAL
LINGUISTIC
INTERPERSONAL
KINESTHETIC
LOGICAL/MATHEMATICAL

Animal Rights

Lesson 3

Objectives

Students will:

- Work toward consensus and then draft legislation.
- Present proposed bills and debate their merits.

Materials

Copies of student handouts:

- Sample Bil'
- Drafting Instructions
- Steps in the Legislative Process
- Standard classroom supplies
- Gavel (optional) for presiding officer
- Nameplates with students' names and roles

Time Required

1 to 2 class periods.

Procedures

■ **Tell students** they will now work together to write legislation about the use of animals in research. Ask each Representative on the House committee from the previous lesson to form a new committee to work together to draft legislation. Each new drafting committee will consist of one member from each of the interest groups. (For example, if you have five Representatives, there will be five new committees, with one member drawn from each of the interest groups. Try to structure it so that the committees have an odd number of members.) The Representative will chair the committee.

■ **Pass out the handout** of the sample bill. Ask students to read it, and list the parts of the bill:

- Title.
- Preamble—explains the reason why the law is being proposed.
- Statement of policy and findings.
- Definitions.
- Substance—rules, penalties. This is the longest part of the law. (Here called "Standards")
- Effective Date.

Explain that the language at the beginning is a model. Tell students to generally follow this format, but not to be slaves to it! They may add additional parts, or leave some out.

■ **Pass out** the drafting instructions handout and discuss it. Tell students to first decide in their group what method they will use to reach a decision. (For example: a majority vote; need more than one person to veto?) Then tell students to begin drafting their proposed bills. Do not give them more than one period.

■ **As each group** completes the writing of its proposed bill, the members should sign the bill as its "sponsors." The chairperson reports to the Chief Clerk of the House (a student or the teacher) who assigns the bill a number. Bills should be placed on the agenda in the order in which they are received.

Note: If time is short, you may ask students to put their bills in a hat, and select one randomly to go through the Legislative process. In the actual State House of Representatives, the bill is then assigned to a committee, which may take public testimony, study the bill and hold hearings. The committee may either draft a new bill, kill it, or add amendments. If still "alive" the bill then goes to the Rules Committee, where it is either placed on the agenda for debate on the floor or dies if the chairman of the Rules Committee does not place it on the agenda. For purposes of this exercise, we will skip the committee debates, and consider the bills on the floor of the full body of the House. This stage is called the "second reading." Competing bills on the same subject matter would usually be handled in committee, not the full body, but we are varying from reality for the purposes of this exercise.

■ **Pass out the handout**, "Steps in the Legislative Process." Review the steps and make sure that students understand the procedures outlined.

■ **Before the session begins**, the student legislator groups may wish to discuss any similarities in their proposed bills to see if any groups can unite behind a common proposal. Encourage this by having groups exchange copies of their bills for comparison. One way to do this is to have each group prepare a press release on its bill, and circulate these at a short reception. Allow time for students to meet and work toward consensus.

■ **Time limits** for the various steps in the legislative debates should be decided upon ahead of time. The presiding officer shall be empowered to cut off speaking time when the limit has been reached. (5-7 minutes is often enough time.)

■ **The presiding officer** calls the legislature to order, indicates that all votes will be decided by a simple majority, announces the issue, and opens the debate.

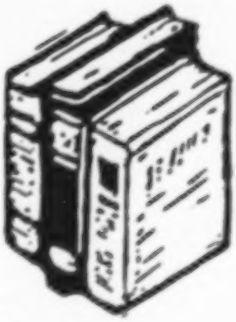
■ **Follow the steps** outlined in the handout, and let students debate until the time you have allotted for the session runs out. (No more than one period.)

Extensions

- Ask students to draw a political cartoon representing their own personal viewpoint after studying this issue.
- Have students make posters presenting different points of view.
- Have students investigate what the situation is locally regarding the use of animals in research.

A Bill

(Sample only)



Title

"This Act may be cited as the 'Animal Welfare Act of 199_."
Be it enacted by the Legislature of the State of Washington:

Preamble

In order to ensure that animals are adequately protected in medical research conducted within the State of Washington, the following law is enacted:

Statement of policy and findings

Section 1. The Legislature finds that regulation of animals and research activities involving animals is necessary in order—

(1) To insure that animals intended for use in research facilities are provided humane care and treatment;

Section 2. The Legislature finds that—

(1) The use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals; **— or —**

(1) The use of animals should be prohibited ....

(2)

Section 3. Definitions. When used in this Act:

(a) The term "animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes;

(b) The term "research facility" means any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments;

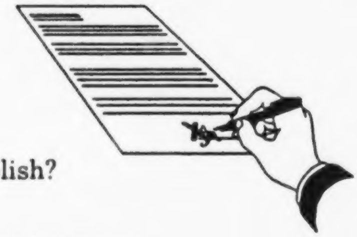
Section 4. Humane standards for animals used in research.
(List standards for use of animals in research, if your bill will allow for their use.)

Rules.

Penalties for violations.

Effective Date.

Drafting a Law



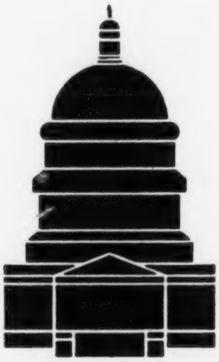
Before starting to draft a law (called a bill until it becomes law), think about the following questions:

1. What is your objective? What do you want to accomplish? (A short statement would be your preamble.)
2. Is there a need for this law? If so, why? (This would go into your statement of policy.)
3. What research do you have to back up the need for the law? What facts establish a need for the law? (This would go into your findings.)
4. How will you address the problem? Be very specific. (Standards.)
5. What sort of penalties will you impose for violations of the law?
6. What title will you give to your law? The title should describe what the law is about very specifically. Do not make it too long.
7. When will your law be in effect?

General drafting rules:

- Use clear, nontechnical language. Be very careful in your selection of words. Feel free to use the Thesaurus or dictionary to find exactly the right word to express your thought or intention.
- Avoid unnecessary or vague wording. Be succinct!
- Avoid long and involved sentences. A short, definite and clear sentence is best.
- Use present tense.
- Avoid repetition.
- Write out all numbers.

Steps in the Legislative Process



The debate on proposed legislation will take place in the following order:

1. Bills are submitted to the Chief Clerk of the House of Representatives, and placed on the agenda in the order in which they are received.
2. The full body of the House of Representatives will convene, with the Speaker of the House presiding. The presiding officer has the authority to time speakers, and cut off debate when time limits have expired.
3. The first bill submitted will be called by the Chief Clerk. The spokesperson for the committee proposing this bill will read the bill, and speak for up to 5 minutes in favor of the bill.
4. After the chairperson or group spokesperson has completed presentation of the bill, he/she may remain standing and recognize two other members of the group who may then make additional comments in favor of the bill.
5. The bill is then discussed and debated by the entire legislature. Representatives from other groups may ask questions, offer criticisms, or suggest amendments (called "floor" amendments). The chairperson or spokesperson for the group that developed the bill responds to the questions, criticisms, or suggested amendments.
6. When the discussion and debate on each of the proposed bills have been completed, legislators may move:
   a. That one of the bills be voted upon;
   b. That the session be recessed to enable the groups to consider the bills that have been presented. If the session is recessed, each group meets to decide upon a course of action. A group may decide to:
      1) Support one of the bills as presented;
      2) Suggest amendments to one of the bills; or
      3) Bargain with another group, swapping votes for agreement on the suggested amendments. The chairperson of each group may choose two Representatives to carry out the bargaining, if this is the decision of the group.

When the session is reconvened, the chairperson asks for a motion to vote on one of the bills or a motion to amend one of the bills. If amendments are proposed, they are individually debated and voted upon.

9. After all of the bills have been presented and if none has been passed, each group meets individually to decide upon a course of action. A group may decide to attempt to gather additional support for its bill by:
    a. Convincing individuals from another group to vote in behalf of its bill;
    b. Changing its position and voting as a block or as individuals for one of the other bills; or
    c. Developing a compromise bill worked out with members of other groups. During this period Representatives from different groups may meet in an attempt to work out an agreement.
10. The chairperson of each group presents amended bills to the presiding officer, who calls for a general session, and the debate procedure is repeated. This process is continued until (1) a bill is passed or (2) the time allotted for the session is up and the legislature is adjourned.

LINGUISTIC
INTERPERSONAL
INTRAPERSONAL
MUSICAL
LOGICAL/MATHEMATICAL

Animal Rights

Lesson 4

Objectives

Students will:

- Reflect on their process and their products during this unit during a debriefing session.
- Individually respond to a hypothetical constituent who is unhappy with the position the student took during the legislative debate.

Materials

Copies of handout:

- Mock Telegram
- Standard classroom supplies

Time Required

1 class period.
Individual response could be assigned as homework.

Procedures

■ **Debrief the class** about the role play. Debriefing is an important aspect of any kind of role playing. It also encourages analytical and critical thinking skills. Take care to respect student privacy by avoiding personal questions. Sample questions that could be posed:

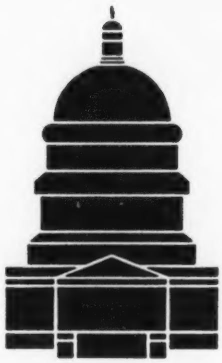
- **Content**
  - What was the issue?
  - What facts came out during the hearings?
  - What alternative courses of action were available?
  - Was the problem solved? Why or why not?
- **Extension**
  - Is this situation similar to anything that you have personally experienced?
  - Can you suggest any other subjects or issues that might be considered in the same manner?
  - How has your opinion changed, of either legislative hearing or the issue, over the course of the unit?
- **Evaluation**
  - Did everyone stay in character? Was it realistic?
  - How did you feel playing that role?
  - If you repeated the activity, would you do anything differently?
  - Was this activity worthwhile?
  - How might this activity be improved?

■ **Tell students**: You are a seasoned politician, with an opinion about the animal rights debate consistent with your own personal opinion after studying this unit. You have just received a telegram from a powerful constituent. This person has supported your campaign in the past and has friends who have also supported you. In the telegram, you read that this person is terribly upset with how you have voted on the animal rights issue, disagrees with you strongly and demands an explanation. You cannot ignore this person's telegram. You must respond. Write a letter to your constituent, explaining your position and why you support that point of view. Be thorough, respectful, and persuasive. (As an alternative, write a letter to your legislator or the local newspaper editor to persuade them to support your point of view on animal research and/or animal rights.)

Extension

Ask students to write a poem or a song about this issue.

Sample Telegram



To: The Honorable ____________________
United States House of Representatives
Washington, D.C. 20515

— or —

To: The Honorable ____________________
United States Senate
Washington, D.C. 20510

From: Constituent
Home State

Dear Senator ____________ or Representative ____________,

I am concerned about your recent work on animal research/animal rights. You have chosen a path directly opposite my beliefs. As you know, I was a substantial contributor to your last campaign. I believe you owe me an explanation. Please respond immediately to the following questions:

1. What is your true position at this time on the issue of animal research/ animal rights?
2. Why do you feel this is the best alternative?
3. What are the costs and benefits of this alternative?
4. What do you predict will happen as a result of this legislation?

Thank you for your time and consideration.